



ATTORNEYS FOR APPELLANT

Denise F. Hayden
Lacy Law Office, LLC
Indianapolis, Indiana
Heather L. George Myers
Greenwood, Indiana

ATTORNEYS FOR APPELLEE

Raegan M. Gibson
Mackenzie E. Skalski
Joey K. Wright
Paganelli Law Group
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Ruth Anne Herber,
Appellant-Respondent,

v.

Daniel Bunting,
Appellee-Petitioner.

August 26, 2022

Court of Appeals Case No.
21A-DR-2707

Appeal from the Marion Superior
Court

The Honorable Marshelle D.
Broadwell, Judge

The Honorable Burnett Caudill,
Magistrate

The Honorable Joel A. Schneider,
Magistrate

Trial Court Cause No.
49D16-1610-DR-36566

Brown, Judge.

[1] Ruth Anne Herber (“Ruth Anne”) appeals the trial court’s orders granting Daniel Bunting’s (“Dan”) motion to enforce settlement agreement and the partial denial of her motion to correct error. Dan requests appellate attorney fees. We affirm the trial court’s orders, grant Dan’s request for appellate attorney fees, and remand.

Facts and Procedural History

[2] Dan and Ruth Anne were married in August 2000. There are two mortgages on the marital residence which Dan and Ruth Anne both signed, one held by USAA Federal Savings Bank (“the first mortgage”) and the other held by Stephen J. Bobeck (“the second mortgage”).

[3] In October 2016, Dan petitioned to dissolve their marriage, and nearly three years later, in July 2019, the trial court entered a dissolution decree and incorporated their settlement agreement into the decree. The settlement agreement provided the marital residence would be Ruth Anne’s “sole and separate property” subject to these conditions:

[Ruth Anne] shall assume and be solely responsible for any and all liens on said property. Until resolution of the second lien on the marital residence, [Ruth Anne] shall have 6 months to refinance the marital residence, [but if she does not] . . . , [Dan] may petition the court to force sale of the marital residence.

Appellant’s Appendix Volume II at 21. Starting in early 2020, Ruth Anne made no payments on the first mortgage for about sixteen months.

- [4] In May 2021, nearly two years after the decree and settlement agreement were entered, Dan moved to enforce the agreement and compel the sale of the marital residence, alleging Ruth Anne had failed to refinance the residence, which Dan claimed was damaging his credit and limiting his ability to borrow money.
- [5] On August 30, 2021, the trial court conducted an evidentiary hearing on Dan's motion to enforce. Both Ruth Anne and Dan testified that Ruth Anne tried to refinance the first mortgage, but USAA only offered her a loan modification. To approve the loan modification, USAA required Dan's signature, but he refused because the loan modification would not remove his name from the first mortgage. As to the second mortgage, Ruth Anne claimed she had paid off the loan, but Bobeck would not release the mortgage because he claimed Ruth Anne owed him \$50,000 on the mortgage. Because Ruth Anne and Bobeck were at an impasse, their dispute was going to litigation. Ruth Anne also testified USAA would not refinance the first mortgage until Bobeck released the second mortgage. Dan testified that he could not buy his own home because the mortgages were still on his credit report.
- [6] At the end of the hearing, the trial court found Ruth Anne had breached the settlement agreement by failing to refinance the marital residence. The court ordered her to refinance it, and if she did not, the marital residence would be sold.

[7] On October 4, 2021, the trial court issued a written order on Dan’s motion to enforce, which affirmed the finding and conclusions of its ruling from the bench. In addition, the order (1) provided that if the marital residence was sold, Dan would choose the real estate broker to list the marital residence; (2) stated that the broker would set the listing price and must accept any offer on the marital residence within five percent of the listing price (unless certain exceptions applied); (3) directed Ruth Anne to maintain the marital residence and make timely payments on the mortgages; and (4) provided details about how the sale proceeds would be distributed.

[8] On October 29, 2021, Ruth Anne filed a motion to correct error, alleging, in part, that the settlement agreement did not give Dan authority to choose the listing agent for the sale of the marital residence. The trial court granted the motion in part by ruling that Ruth Anne would select the listing agent, but if a listing agent were not selected, the trial court would appoint a Commissioner to make the sale proceed. It also ruled that all other provisions in its order granting Dan’s motion to enforce remained in effect.

Discussion

I.

[9] Ruth Anne argues the trial court’s order of enforcement was an impermissible modification of the settlement agreement because the order included terms that were not in the agreement and that were not addressed in the parties’ testimony at the hearing. She also argues the partial denial of her motion to correct error

was an abuse of discretion because that ruling left intact nearly all substantive provisions of the enforcement order.

[10] We review a trial court’s interpretation and enforcement of a settlement agreement for an abuse of discretion. *See Fackler v. Powell*, 839 N.E.2d 165, 167-168 (Ind. 2005) (“[A] dissolution court that enters a property settlement agreement is in the best position to resolve . . . questions of interpretation and enforcement [of the agreement].”). We review a ruling on a motion to correct error under the same standard. *See In re Marriage of Dean*, 787 N.E.2d 445, 447 (Ind. Ct. App. 2003), *trans. denied*. An abuse of discretion occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.*

[11] Parties to a dissolution may negotiate their own property settlement agreements and incorporate those into a dissolution decree. *Harris v. Copas*, 165 N.E.3d 611, 619 (Ind. Ct. App. 2021). “Such settlement agreements, if approved by the trial court, are binding contracts which are interpreted according to the same general rules applicable to other types of contracts.” *Id.* (citing *Ryan v. Ryan*, 972 N.E.2d 359, 363-364 (Ind. 2012)). “The disposition of property settled by an agreement . . . and incorporated and merged into the decree is not subject to subsequent modification by the court, except as the agreement prescribes or the parties subsequently consent.” Ind. Code § 31-15-2-17(c).

[12] Ruth Anne identifies several provisions in the enforcement order as impermissible additions to or modifications of the settlement agreement. These

include the trial court's directives that (1) a licensed real estate broker would list the marital residence for sale; (2) the broker would set the listing price; (3) Ruth Anne would maintain the residence and make timely payments on the mortgages; and (4) the proceeds from the sale of the residence would be distributed in a particular way.

[13] We disagree that the trial court's order of enforcement was an impermissible modification of the settlement agreement. In ordering the sale of the marital residence, the trial court did not modify the agreement but enforced an express provision of the agreement: "In the event [Ruth Anne] does not refinance the home within the prescribed time limit, [Dan] may petition the court to force sale of the marital residence." Appellant's Appendix Volume II at 21.

[14] We acknowledge that some terms of the enforcement order are not expressly stated in the settlement agreement and were not addressed in testimony at the hearing. But these terms were not a modification. A dissolution court can interpret and effectuate a dissolution decree and "resolve . . . questions of interpretation and enforcement" of a settlement agreement. *Fackler*, 839 N.E.2d at 167-168. That is what the trial court did. When the parties negotiated the terms of the agreement they could have agreed to details about the sale of the marital residence. But since they did not, the trial court properly assumed its role to interpret, consummate, and enforce the parties' intent by ordering specific details to bring about the sale. Thus, the trial court did not modify the parties' agreement.

[15] Ruth Anne asks us to remand this matter to let the parties negotiate additional terms about the steps to sell the marital residence. She correctly observes that at the end of the hearing, the trial court suggested that the parties' attorneys negotiate those details. This was within the trial court's discretion. But when the trial court issued its written order to force the sale, over a month had passed since the hearing, and Ruth Anne had been under order for about twenty-seven months to refinance the marital residence, yet she had failed to do so. All matters remain *in fieri* until final judgment, so the trial court's decision in its October 4, 2021 order to set the terms of sale was not an abuse of discretion. *See Stephens v. Irvin*, 734 N.E.2d 1133, 1135 (Ind. Ct. App. 2000) (“[A] trial court has the inherent power to reconsider any of its previous rulings so long as the action remains *in fieri*.”), *trans. denied*.

[16] Thus, the trial court did not abuse its discretion in providing details in the order of enforcement about how the marital residence should be sold. Likewise, its ruling on Ruth Anne's motion to correct error was not an abuse of discretion.

II.

[17] Dan asks us to order Ruth Anne to pay his appellate attorney fees because he contends her appeal is frivolous and calculated to further delay the sale of the marital residence.

[18] “The Court may assess damages if an appeal, petition, or motion, or response, is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorneys' fees. The Court shall remand the case for execution.” Ind.

Appellate Rule 66(E). “Our discretion to award attorney fees under Ind. Appellate Rule 66(E) is limited to instances when ‘an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay.’” *Staff Source, LLC v. Wallace*, 143 N.E.3d 996, 1012 (Ind. Ct. App. 2020) (quoting *Thacker v. Wentzel*, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003)).

- [19] Ruth Anne’s requests for appellate relief convince us that the purpose of her appeal is to keep delaying the sale of the marital residence. Both of her briefs ask us to vacate the orders of enforcement and the order on her motion to correct error, but her opening brief appears to suggest we should allow the parties on remand to negotiate the details about how the marital residence should be sold. But in her reply brief, Ruth Anne does not suggest further negotiations but asks for remand so the trial court may “establish the terms for the sale of the [marital] residence and the distribution of any proceeds therefrom.” Appellant’s Reply Brief at 8.
- [20] Under the settlement agreement, the marital residence should have been sold in early 2020. Allowing further negotiations could substantially delay the sale of the marital residence and keep the two mortgages on Dan’s credit report. Ruth Anne’s other request for relief, allowing the trial court to establish the terms of sale, which it has done once, would also delay resolution of this case, especially if another appeal came before this Court.
- [21] Thus, we find that the purpose of Ruth Anne’s appeal is to delay the sale of the marital residence. See *Wagler v. W. Boggs Sewer Dist., Inc.*, 29 N.E.3d 170, 174-

175 (Ind. Ct. App. 2015) (“[W]e agree that this appeal appears to be part of a strategy to simply draw this matter out with the hope that West Boggs will quit.”) (internal quotation marks and citation omitted). Therefore, we conclude Dan is entitled to appellate attorney fees, and we remand to the trial court to determine the proper amount of appellate attorney fees.

[22] For the foregoing reasons, we affirm the trial court’s orders, grant Dan’s request for appellate attorney fees, and remand for a determination of his reasonable appellate attorney fees.

[23] Affirmed and remanded.

Vaidik, J., and Mathias, J., concur.