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IN THE
COURT OF APPEALS OF INDIANA

Jacqueline Kristen Dennis
(Darbo),
Appellant-Petitioner,

v.

Gary Clyde Dennis,
Appellee-Respondent.

June 3, 2022

Court of Appeals Case No.
22A-DR-345

Appeal from the
Hamilton Superior Court

The Honorable
Michael A. Casati, Judge

Trial Court Cause No.
29D01-0608-DR-759

Molter, Judge.

- [1] In 2007, the Hamilton Superior Court dissolved the marriage between Jacqueline Kristen Dennis (Darbo) (“Wife”) and Gary Clyde Dennis (“Husband”). Along with the dissolution decree, the trial court entered the parties’ settlement agreement, which required Husband to execute a quitclaim deed transferring his interest in the marital residence to Wife after she paid him a sum of money. Although Wife claims she paid the sum, Husband failed to

execute the quitclaim deed, and he subsequently passed away in 2021. Wife petitioned the dissolution court to appoint a commissioner to execute the quitclaim deed or to declare the judgment lien Husband held on the marital residence to be satisfied and released. The dissolution court denied the petition based on caselaw stating a general rule that when a party to dissolution proceedings dies, the trial court no longer has jurisdiction. Because we conclude that rule does not apply here, we reverse.

Facts and Procedural History

[2] On August 13, 2007, the marriage between Husband and Wife was dissolved. Incorporated in the Decree of Dissolution was a Settlement Agreement entered between Husband and Wife, which provided that Wife would have sole possession of the marital residence, located at 14310 Moonlight Path, Fishers, Indiana. The Settlement Agreement also required Wife to pay Husband \$19,921.50, and upon the payment of that amount, Husband was to execute a quitclaim deed transferring his interest in the marital residence to Wife. Sometime before 2010, Wife made the \$19,921.50 payment to Husband, but for reasons that are not revealed in the record before us, Husband failed to execute a quitclaim deed transferring his interest in the marital residence to Wife. Husband subsequently died in July 2021.

[3] On January 7, 2022, Wife filed with the dissolution court a Petition to Appoint Commissioner or to Declare Lien Satisfied and Released, seeking to enforce the terms of the Settlement Agreement with respect to the marital residence. In her petition, Wife asserted that, pursuant to statute, Husband held a judgment lien

on the marital residence, which had expired as a matter of law upon his death, and she sought to have the lien declared “void and of no effect and show the same satisfied and released, to appoint a commissioner for execution of a quit claim deed and to grant all other relief proper in the premises.” Appellant’s App. Vol. 2 at 11–13. On February 7, 2022, the dissolution court denied Wife’s petition, finding that it lacked jurisdiction “to address the petition within this cause” because Husband had died and “[a]s a general rule, a court’s authority in a divorce proceeding terminates with the death of one of the parties.” *Id.* at 9. On February 9, 2022, Wife filed a Motion to Reconsider, but the trial court never ruled on the motion, so it was deemed denied under Indiana Trial Rule 53.4(B). Wife now appeals.

Discussion and Decision

[4] Where there are no factual disputes, we review a dismissal for lack of jurisdiction *de novo*. *Edwards v. Edwards*, 80 N.E.2d 939, 943 (Ind. Ct. App. 2017). Indiana courts have long observed that dissolution proceedings generally “terminate entirely with the death of one of the parties to the dissolution.” *Id.* Courts sometimes describe this general rule in jurisdictional terms, stating that a trial court loses jurisdiction over the case. *See, e.g., Riggs v. Riggs*, 77 N.E.3d 792, 794 (Ind. Ct. App. 2017) (“Indiana follows the general rule that the trial court in a dissolution action loses jurisdiction over the case upon the death of one of the principals (‘the Termination Rule’).” (quotations omitted)). The trial court here understandably—but mistakenly—relied on this general rule and opinions

describing the rule as a jurisdictional limitation to conclude it lacked jurisdiction in this case.

- [5] To begin with, the question, at least in circumstances like these, is not really a jurisdictional question. Our Supreme Court has clarified there is no separate jurisdictional category for jurisdiction over the case. “[P]hrases recently common to Indiana practice, like ‘jurisdiction over a particular case,’ confuse actual jurisdiction with legal error, and we will be better off ceasing such characterizations.” *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006). Instead, “[l]ike the rest of the nation’s courts, Indiana trial courts possess two kinds of ‘jurisdiction.’ Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs. Personal jurisdiction requires that appropriate process be effected over the parties.” *Id.*¹
- [6] “The question of subject matter jurisdiction entails a determination of whether a court has jurisdiction over the general class of actions to which a particular case belongs.” *Id.* (quotations omitted). An example of a subject-matter jurisdiction defect would be a juvenile delinquency adjudication entered in a small claims court. *Id.* There is no such problem here.

¹ A party’s death does not deprive a trial court of personal jurisdiction, although Trial Rule 25(A) sometimes requires a substitution of parties. *See Estate of Bichler by Ivy v. Bichler*, 183 N.E.3d 316, 322 (Ind. Ct. App. 2022) (“While it is true that, as discussed above, Wanda’s death meant she ceased to be a party, that does not mean the trial court lost personal jurisdiction.”).

[7] The Indiana Code creates a cause of action for marriage dissolution, Ind. Code § 31-15-2-2, which entails the division of property, Ind. Code § 31-15-7-4, and “[n]otwithstanding any other law, all orders and awards contained in a dissolution of marriage decree or legal separation decree may be enforced by: (1) contempt; (2) an income withholding order; or (3) any other remedies available for the enforcement of a court order,” Ind. Code § 31-15-7-10. The General Assembly has vested jurisdiction over these civil proceedings in courts like the Hamilton Superior Court. *See* Ind. Code § 33-28-1-2(a) (“All circuit courts have . . . original and concurrent jurisdiction in all civil cases”); Ind. Code § 33-29-1-1.5 (“All standard superior courts have . . . original and concurrent jurisdiction in all civil cases”).

[8] Moreover, even to the extent the general rule is jurisdictional, our Supreme Court has recognized three exceptions: (1) pursuant to statute, a party may seek to modify a property disposition based on fraud even if one spouse has died so long as the modification is sought within the statutory deadline, *State ex rel. Smith v. Delaware County Superior Court*, 442 N.E.2d 978, 980 (Ind. 1982); (2) a deceased spouse’s attorney may seek attorney fees for work performed before the spouse’s death because the fees are not part of the judgment and because denying counsel the opportunity to recover fees would create “a gross miscarriage of justice,” *State ex rel. Paxton v. Porter Superior Court*, 467 N.E.2d 1205, 1207 (Ind. 1985); and (3) based on the observation that the general rule “seems to have been honored more in the breach,” there is an exception when a

party seeks to reduce child support arrearages to a judgment, *Lizak v. Schultz*, 496 N.E.2d 40, 43 (Ind. 1986).

[9] Our court has recognized exceptions too, and Wife relies on one such exception from *Edwards v. Edwards*, 80 N.E.2d 939 (Ind. Ct. App. 2017). In that case, a husband and wife entered a settlement agreement that awarded the wife an interest in the husband’s pension and retirement benefits but did not assign the responsibility of preparing the document necessary to divide the pension and retirement benefits. 80 N.E.3d at 941. Several years later, the wife had still not received her portion of the pension and retirement benefits and became aware that the husband was terminally ill, so she sought emergency relief from the dissolution court to enable her to obtain those benefits. *Id.* at 941–42. An agreed restraining order was issued that prohibited husband from disposing of the retirement benefits, and the dissolution court ordered wife’s attorney to prepare the necessary paperwork for the division of the retirement benefits and set the matter for a hearing. *Id.* at 942.

[10] The husband passed away the next day, and the personal representative of his estate then intervened in the matter, arguing the dissolution court no longer had jurisdiction. *Id.* The trial court agreed, but we reversed, holding that the dissolution court retained “continuing jurisdiction to reexamine a property settlement where the nature of the examination is to seek clarification of a prior order.” *Id.* at 944 (quotations omitted). We also noted that the “jurisdictional grant to a dissolution court is warranted as an extension of the necessary and usual powers essential to effectuate the marital dissolution, which includes the

power to interpret the court’s own decree.” *Id.* (brackets and quotations omitted). This continuing jurisdiction included the “authority to complete the implementation of the division of property as ordered in the final decree.” *Id.*

[11] The petition at issue here is analogous to the proceedings in *Edwards* because Wife merely seeks to enforce the agreed upon property settlement, which falls within the dissolution court’s continuing jurisdiction “to complete the implementation of the division of property as ordered in the final decree.” *Id.* Moreover, the three common law exceptions the Supreme Court has recognized “were made when the equities weighed in favor of allowing a party to recover who would otherwise be injured because the court lost jurisdiction over the dissolution action.” *Beard v. Beard*, 758 N.E.2d 1019, 1022 (Ind. Ct. App. 2001); *see also Riggs*, 77 N.E.3d at 800 (Robb, J., dissenting) (“I am less concerned here with the specific facts leading to each exception than I am with the notion that the exceptions acknowledge termination of a dissolution action on the death of one of the parties is not a hard and fast rule.”). That also appears to be the case here.

[12] Therefore, while we express no opinion on the underlying merits of Wife’s petition, we agree with her that, as in *Edwards*, the trial court did not lack jurisdiction to rule on her petition.

[13] Reversed and remanded.

Mathias, J., and Brown, J., concur.