

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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In the Matter of the Marriage of:

Carrie A. Anderson n/k/a  
Carrie A. LaMere,  
*Appellant-Petitioner,*

v.

Newel Anderson,  
*Appellee-Respondent.*

May 27, 2022

Court of Appeals Case No.  
22A-DN-71

Appeal from the  
Lake Superior Court

The Honorable  
Alexis Vazquez Dedelow,  
Magistrate

Trial Court Cause No.  
45D03-1911-DN-815

**Molter, Judge.**

- [1] Carrie A. Anderson, n/k/a Carrie A. LaMere (“Wife”), appeals the trial court’s order on Newel Anderson’s (“Husband”) petition to enforce their dissolution decree. Wife claims the trial court erred in its interpretation of the settlement

agreement that was incorporated into the dissolution decree, improperly granting Husband a snowmobile and Ranger ATV which were in her possession at the marital residence. Because we agree, we reverse and remand with instructions to award the snowmobile and Ranger ATV located at the marital residence to Wife as her own property.

### **Facts and Procedural History**

[2] On December 13, 2013, Wife and Husband entered into a prenuptial agreement providing, among other things, that: “Each party shall, during his or her lifetime, keep and retain sole ownership, enjoyment, control and power of disposal of all the separate property listed on Exhibits ‘A’ and ‘B’.” Appellant’s App. Vol. 2 at 20. Exhibit A’s list included Husband’s “[s]nowmobiles and equipment” along with his “Rangers.” *Id.* at 30. Wife and Husband married on December 29, 2013, but roughly six years later, on November 8, 2019, Wife petitioned for dissolution.

[3] The trial court ordered the parties to participate in mediation, which was successful. They entered into a mediation agreement which was superseded by a property settlement agreement that the trial court incorporated into the dissolution decree. The mediation agreement stated that “Husband shall be entitled to ownership of personal property circled on the list annexed as ‘Exhibit A’”—which was a new list attached to the mediation agreement, not the Exhibit A to the prenuptial agreement—and “[o]therwise, each party [was] awarded that property currently in their possession.” *Id.* at 49. Wife was further awarded sole ownership and possession of the marital residence, which

is where the snowmobile and Ranger ATV at issue were located. Critical here, those vehicles were *not* listed on Exhibit A to the mediation agreement.

[4] The parties' subsequent settlement agreement, which further memorialized the mediation agreement, likewise stated that Wife was awarded sole possession of the marital residence and everything in her possession there with limited exceptions:

1. That wife shall be awarded as her sole and exclusive property the personal property in her possession, **and the personal property located at the marital residence**, except as set out herein.

2. That husband shall be awarded as his sole and exclusive property the following:

a. The personal property in his possession and as set out herein.

b. The personal property located at the marital residence, pursuant to the circled items on Exhibit "A", which is attached to the Mediation Settlement Agreement, and also attached hereto and made a part hereof.

*Id.* at 44 (emphasis added). Finally, as is pertinent here, the settlement agreement provided that for all other property, the parties would revert to the prenuptial agreement. *Id.* at 45 ("That in all other respects, except as set out herein, said Prenuptial Agreement shall be given full force and effect and that each party is awarded as their sole and exclusive property, their individual property and assets as outlined in said Prenuptial Agreement . . .").

- [5] The parties' marriage was dissolved on June 24, 2021. The next month, Husband petitioned the trial court to enforce its dissolution decree, alleging that Wife had failed to release and return the property that the trial court awarded to Husband. The parties eventually resolved all issues concerning Husband's petition, except for whether Wife or Husband owned one of his premarital snowmobiles and one of his premarital Ranger ATVs. These two items of personal property were left in Wife's possession at the marital residence. Husband argued that they were his possession pursuant to the parties' prenuptial agreement, and Wife instead argued that their settlement agreement modified the prenuptial agreement and awarded the property to her.
- [6] Because the parties agreed that there were no issues of fact, the trial court heard legal argument on Husband's petition in November 2021. It then took the matter under advisement. The following month, the trial court issued an order on the petition, awarding the snowmobile and Ranger ATV to Husband as his sole property. Wife now appeals.

## **Discussion and Decision**

- [7] Wife argues the trial court erred in its interpretation of several provisions of the settlement agreement. Particularly, she challenges the trial court's interpretation of the settlement agreement to grant to Husband the snowmobile and Ranger ATV in her possession at the marital residence. Wife asserts that the parties' settlement agreement modified their prenuptial agreement, which originally granted both of Husband's snowmobiles and Ranger ATVs to him.

- [8] We begin by noting that Husband did not file an appellee’s brief. When an appellee fails to submit a brief, we do not undertake the burden of developing the appellee’s arguments. *K.L. v. E.H.*, 6 N.E.3d 1021, 1029 (Ind. Ct. App. 2014). Instead, we apply a less stringent standard of review and may reverse if the appellant establishes prima facie error. *Id.* “Prima facie error in this context is defined as, at first sight, on first appearance, or on the face of it.” *Falatovics v. Falatovics*, 15 N.E.3d 108, 110 (Ind. Ct. App. 2014) (quotation marks omitted).
- [9] “Upon the dissolution of a marriage, the parties are free to 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). Because settlement agreements are contractual in nature, they are binding upon the parties if approved by the trial court and “interpreted according to the general rules for contract construction.” *Ryan v. Ryan*, 972 N.E.2d 359, 363–64 (Ind. 2012). Thus, “unless the terms of the contract are ambiguous, they will be given their plain and ordinary meaning.” *Shorter v. Shorter*, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006). Also, if the terms in a contract are clear and unambiguous, they are deemed to be conclusive. *Id.* “[W]e will not construe the contract or look to extrinsic evidence, but will merely apply the contractual provisions.” *Id.* Further, the trial court that approved the settlement agreement retains jurisdiction to interpret and enforce its terms and is in the best position to do so. *Id.* But the interpretation of a settlement agreement presents our court with a question of law, which we will review de novo. *Harris*, 165 N.E.3d at 619.

[10] Here, the provisions concerning the parties' personal property in the settlement agreement clearly and unambiguously state that Wife shall be awarded as her sole property (1) the personal property in her possession and (2) the personal property located at the marital residence, except for specific items of property circled on an exhibit attached to and part of the settlement agreement.

Appellant's App. Vol. 2 at 44. The parties' agreed that the circled items on the exhibit would be granted to Husband as his sole property, and the snowmobiles and Ranger ATVs were not included in that list or circled on it. *Id.* at 12, 44, 51. Also, the parties' mediation settlement agreement, which was a precursor to their settlement agreement, provided the same. *Id.* at 49 ("Husband shall be entitled to ownership of personal property circled on the list amended as 'Exhibit A.'"). Thus, Wife is correct in her assertion that the parties' settlement agreement provided that she would retain the snowmobile and Ranger ATV in her possession at the marital residence.

[11] In awarding the snowmobile and Ranger ATV at the marital residence to Husband, the trial court relied on a provision in the settlement agreement that governs the parties' prenuptial agreement. *Id.* at 12–13. That provision provides that "in all other respects" and "except" as provided by the settlement agreement, the parties' prenuptial agreement must be given full force and effect. *Id.* at 12, 45. But as discussed above, the settlement agreement did address ownership of the snowmobile and Ranger ATV, providing they would be retained by Wife because they were in her possession at the marital residence and not included on the exhibit listing excluded property that would be

Husband's property. So there was no basis for reverting back to the prenuptial agreement. *Shorter*, 851 N.E.2d at 383 ("Clear and unambiguous terms in the contract are deemed conclusive, and when they are present we will not construe the contract or look to extrinsic evidence, but will merely apply the contractual provisions.").

[12] Thus, we conclude Wife has established prima facie error in the trial court's interpretation of the settlement agreement. We therefore reverse the trial court's order and remand with instructions to award the snowmobile and Ranger ATV located at the marital residence to Wife as her own property.

[13] Reversed and remanded with instructions.

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