MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Summer R. Weaver,
Appellant / Cross-Appellee / Petitioner,

v.

Kenneth A. Weaver,
Appellee / Cross-Appellant / Respondent.

February 10, 2023

Court of Appeals Case No. 21A-DC-2725

Appeal from the Hamilton Superior Court

The Honorable Michael A. Casati, Judge

Trial Court Cause No. 29D01-1910-DC-9127

Memorandum Decision by Judge Pyle

Judges Robb and Weissmann concur.

Pyle, Judge.

Statement of the Case

[1] Before they married, Summer R. Weaver ("Wife") and Kenneth A. Weaver ("Husband") entered into a premarital agreement ("the Agreement"). Husband bought Wife a diamond engagement ring valued at $6,000, and once they had married, they upgraded the ring several times. During the marriage, Wife formed an LLC that later purchased two pieces of real estate. After Wife had filed a verified petition to dissolve the marriage, Husband and Wife discovered that the final upgraded ring was damaged, so they filed an insurance claim, eventually receiving more than $300,000 for the ring. On appeal, Wife challenges the trial court's determination that the LLC, the ring, and the insurance proceeds from the ring were martial property. On cross-appeal, Husband challenges the trial court's order requiring him to pay a portion of Wife's attorney fees. We affirm the trial court's conclusion that the ring and insurance proceeds from the ring were marital property, reverse its determination that the LLC was marital property, and reverse the trial court's attorney fee award. We remand to the trial court to recalculate the division of property.

[2] Affirmed in part, reversed in part, and remanded.

Issues

1. Whether the trial court erred in finding that the LLC was marital property?

2. Whether the trial court erred in finding that the ring and insurance proceeds from the ring were marital property?

3. Whether the trial court abused its discretion in ordering Husband to pay $100,000 of Wife's attorney fees.

Facts

[3] Before they married, Husband bought Wife a one-carat diamond engagement ring valued at $6,000.00. On May 16, 2007, the parties entered into the Agreement, and two days later they married. They have two children.

[4] After they married, Husband and Wife traded in the ring to buy an "upgraded" diamond ring and purchased more upgrades during the marriage. (Tr. Vol. 3 at 82; Tr. Vol. 4 at 109). The last ring they purchased during the marriage was a ten-carat diamond ring ("the final ring"). They insured the final ring under their joint policy with Chubb Insurance ("Chubb").

[5] Husband and Wife also had various business interests. During the marriage, Wife formed Glennarose, LLC ("the LLC"). The parties' children were initially listed as members of the LLC but were later removed as members. Husband helped pay for the formation of the LLC, but he was never listed as a member of the LLC and was never a titled owner of any of the LLC's properties.

[6] During the marriage, the LLC bought property on Rookwood Avenue ("the Rookwood Property") in Indianapolis. Husband helped pay for the acquisition

of the Rookwood Property, and he helped pay for maintenance and repairs on that property. The LLC also purchased a lot on Keystone Avenue ("the Keystone Lot") during the marriage. The LLC later sold the Keystone lot for $12,308.07.

[7] On August 5, 2019, Wife filed a petition to dissolve the marriage in the Marion Superior Court. About two weeks later, the Marion Superior Court granted the parties' joint motion to change venue to the Hamilton County Superior Court ("the trial court").

[8] While the dissolution action was pending, an appraiser discovered that the final ring was damaged, so at the appraiser's suggestion, Husband filed a claim regarding the final ring with Chubb. Chubb granted the claim and paid $304,787,00 to Husband and Wife. During this same time, the parties spent significant time litigating the issue of child custody.

[9] In late September 2021, the trial court held a three-day final hearing to address unresolved issues regarding child custody and division of property. The Agreement was entered into evidence, and neither party challenged its validity. The Agreement defined what constituted separate property and marital property. The parties disputed whether the following items/entities were separate property or marital property: the LLC, the Rookwood Property, the Keystone Lot, and the final ring and the insurance proceeds from the final ring. The Agreement also addressed the issue of attorney fees incurred in a dissolution action.

[10] On November 9, 2021, the trial court issued its final order and decree of dissolution. Even though neither party requested specific findings of fact or conclusions of law, the trial court issued findings and conclusions. The trial court found that the Keystone Lot was marital property. As to the LLC and Rookwood Property, the trial court found:

> 57. Wife shall have sole possession and ownership of Glennarose, LLC. Based on evidence received, Glennarose, LLC is not deemed Wife's separate property pursuant to the premarital agreement as the entity was formed during the marriage, and includes the parties' children as members. Real estate held by Glennarose, specifically the Rookwood property, was purchased using joint funds, specifically, savings accounts held for the benefit of the parties' children. The parties paid expenses for properties held by Glennarose with Husband's income, marital funds, and Husband's separate property with Wife charging expenses on FCI credit cards. Rookwood is marital property, valued at assessed amount based on the evidence presented.

(App. Vol. II at 32–33).

[11] Similarly, the trial court found that the final ring and the proceeds from the insurance claim on the final ring were also marital property:

> The proceeds [from Chubb] ($304,787.00) shall be divided between the parties. Wife shall receive the first $10,000 as her separate property, as the present value of the original engagement diamond. The remaining $294,787.00 shall be divided between the parties equally. . . . The Court finds such [final] ring to be marital property as the same was purchased during the marriage.

(App. Vol. II at 31).

[12] Finally, the trial court interpreted the Agreement to allow the award of attorney fees for custody-related litigation, and pursuant to that provision, it ordered Husband to pay $100,000 of Wife's attorney fees.

[13] Wife now appeals, and Husband cross-appeals.

Decision

[14] Wife argues the trial court erred in finding that the final ring, the LLC, Rookwood Property, and Keystone Lot were marital properties. Husband claims the trial court erred in ordering him to pay a portion of Wife's attorney fees.

[15] The trial court's sua sponte findings control only the issues they cover, and a general judgment standard controls issues where there are no findings. *Hurt v. Hurt*, 920 N.E.2d 688, 691 (Ind. Ct. App. 2010). When a court has made special findings of fact, we review sufficiency of the evidence using a two-step process, first determining whether the evidence supports the findings of fact and, second, whether the findings support the conclusions of law. *Id.* When reviewing issues under a general judgment standard, we will affirm the trial court if we can sustain its ruling on any legal theory supported by the evidence. *Id.*

[16] In determining the validity of the findings or judgment, we consider only the evidence favorable to the judgment and all reasonable inferences to be drawn

therefrom. *Id.* Findings will be set aside only if they are clearly erroneous, which occurs only when the record contains no facts to support them either directly or by inference. *Id.* A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. *Id.*

[17] Antenuptial agreements are legal contracts entered before marriage that settle each spouse's interest in property of the other both during the marriage and upon its termination. *Rider v. Rider*, 669 N.E.2d 160, 162 (Ind. 1996). Antenuptial agreements are valid contracts if they are freely entered, without fraud, and are not unconscionable. *Id*.

[18] We construe antenuptial agreements under contract principles. *DeHaan v. DeHaan*, 572 N.E.2d 1315, 1323 (Ind. Ct. App. 1991), *trans. denied*. To interpret a contract, we first consider the parties' intent as expressed in the language of the antenuptial agreement. *Id*. If the language of the agreement is unambiguous, we determine the parties' intent from the four corners of the document. *Schmidt v. Schmidt*, 812 N.E.2d 1074, 1080 (Ind. Ct. App. 2004). Review of an antenuptial agreement presents a pure construction of law, so we apply a de novo standard of review when construing such an agreement. *Whittaker v. Whittaker*, 44 N.E.3d 716, 719 (Ind. Ct. App. 2015).

I. The LLC, the Rookwood Property, and the Keystone Lot

[19] Wife argues the trial court erred in finding that the LLC, Rookwood Property, and Keystone Lot were marital properties because Section 1.3 of the Agreement dictates that those properties were her separate properties. Husband argues the

properties were marital properties because: 1) the LLC was formed during the marriage; 2) he helped finance the LLC; and 3) he paid money to purchase, repair, and maintain the Rookwood Property.

[20] Section 1.3 of the Agreement states that the "manner in which a business, investment or other income producing asset is titled or registered shall be determinative of whether such asset should be deemed Separate Property or Marital Property absent a showing of fraud or mistake." (Tr. Vol. 5 at 148). The undisputed evidence shows that the LLC was always titled in Wife's name and never titled in Husband's name. Under the Agreement, it is irrelevant that the LLC was formed during the marriage and that Husband helped pay for the formation of the LLC and contributed funds to buy and maintain the Rookwood Property. In addition, no evidence of fraud or mistake was introduced regarding the formation or business practices of the LLC. Thus, the trial court erred in concluding that the Rookwood Property and Keystone Lot were marital properties.

II. The Final Ring and Insurance Proceeds from the Ring

[21] Wife argues that the trial court erred in concluding that the final ring and insurance proceeds from the final ring were marital property because under Section 1.1 of the Agreement, the final ring and insurance proceeds from the final ring were separate property. Husband contends the final ring was marital property because it was purchased during the marriage and that the insurance proceeds from the final ring were marital property because the policy was a joint policy that Husband and Wife purchased during the marriage.

[22] Wife claims the final ring and the insurance proceeds from the final ring were her separate properties because they were the product of successive upgrades or "exchanges" of rings. She cites the portion of Section 1.1 of the Agreement that says separate property includes property "acquired at any time in exchange for the property described in this Section . . . ." (Tr. Vol. 5 at 147). We disagree.

[23] An exchange is the "act of transferring interests, each in consideration for the other." *Exchange*, BLACK'S LAW DICTIONARY (11th ed. 2019). Here, upgrading rings for more expensive rings was not a mere transfer of interest in consideration of another interest. Besides trading one ring for another ring, these trade ins involved significant expenditures of marital funds to cover the higher cost of each upgraded ring.

[24] Wife acknowledges that the final ring's value greatly exceeded the value of the original ring, but she claims that the higher value of the final ring was simply appreciation in value of the original ring. In support, she cites language in Section 1.1 that states that separate property includes "any and all increases in value to all property described in this Section 1.1, whether or not such appreciation is due in whole or in part to the contributions or efforts of the other party." (Tr. Vol. 5 at 147). We disagree that this language applies here. Wife's argument assumes that there was only one ring during the marriage and that that one ring, originally valued at $6,000, appreciated in value to more than $300,000 during the marriage.

[25] Section 1.2 of the Agreement dictates that the final ring was marital property. It provides, in part:

> [A]ll tangible personal property, such as household goods, furnishings, artwork, china, crystal, silverware and rugs, purchased during the parties' marriage shall be deemed to be held as joint tenants with rights of survivorship unless a clear, contrary intention is expressed in a written instrument signed by the party whose Separate Property was utilized to acquire such tangible personal property. No other property, regardless of how or when acquired shall be deemed Marital Property.

(Tr. Vol. 5 at 148).

[26] The evidence in this case shows that the parties' actions were not an "exchange" under the terms of the Agreement. The parties had used marital funds to purchase an entirely different ring constituting tangible personal property purchased during the marriage. As a result, it was marital property. The insurance proceeds from the final ring were likewise marital property. The insured item—the final ring—was marital property, and the insurance policy was marital property because it was purchased during the marriage and was a joint policy. We note that the trial court did award Wife $10,000 to cover the value of the original ring, but it did not err in concluding that the final ring and insurance proceeds from the final ring were marital property.

III. Attorney Fees

[27] On cross appeal, Husband argues that the trial court abused its discretion in ordering him to pay $100,000 of Wife's attorney fees. A trial court may order a

party in a dissolution action to pay the reasonable attorney fees of the other party. IND. CODE § 31-15-10-1. We review an award of attorney fees for an abuse of discretion. *Scoleri v. Scoleri*, 766 N.E.2d 1211, 1221 (Ind. Ct. App. 2002)

[28] Here, the issue of attorney fees was controlled by the Agreement. The relevant part of the Agreement provided:

> 3.1(a) In the event that either party shall . . . file an action in court for . . . dissolution of marriage, . . . each of the parties hereby waives . . . all claims . . . with respect to the other party's Separate Property, including but not limited to:
>
> . . . .
>
> (iii) the costs and expenses of the action . . . and attorneys' fees which might otherwise be awarded or arise with respect to such action.

(Tr. Vol. 5 at 149).

[29] In ordering Husband to pay a portion of Wife's attorney fees, the trial court interpreted the Agreement to allow an attorney fee award for custody-related litigation.

> 88. The parties' premarital agreement provides that each shall pay his or her own attorney fees except that fees can be ordered for custody litigation or as a contempt sanction.
>
> 89. Having reviewed the attorney fee exhibits and taking all relevant evidence into consideration, the Court does now order

> that [Husband] pay $100,000 in Wife's attorney fees which were accumulated for custody-related matters. . . .

(App. Vol. II at 42).

[30] In our review of the record, we could not find any provision in the Agreement that allowed the award of attorney fees for custody related matters. Because the Agreement clearly states that the parties waive any claim to attorney fees, we find that the trial court misinterpreted the Agreement. As a result, the trial court abused its discretion in ordering Husband to pay $100,000 of Wife's attorney fees for custody related matters.

[31] In conclusion, we affirm the trial court's ruling that the ring and insurance proceeds were marital property, reverse the trial court's determination that the LLC, the Rookwood Property, and the Keystone Lot were marital properties, and direct the trial court on remand to adjust its division of property accordingly. Finally, we reverse the trial court's order requiring Husband to pay $100,000 of Wife's attorney fees.

[32] Affirmed in part, reversed in part, and remanded.

Robb, J., and Weissmann, J., concur.