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IN THE COURT OF APPEALS OF INDIANA

Sandra Haggarty,
Appellant-Petitioner,

v.

Thomas M. Haggarty,
Appellee-Respondent

August 17, 2021

Court of Appeals Case No. 20A-DC-1877

Appeal from the Allen Circuit Court

The Honorable Thomas J. Felts, Judge

Trial Court Cause No. 02C01-1803-DC-365

May, Judge.

[1] Sandra Haggarty appeals following the trial court's resolution of contested issues in the dissolution of her marriage to Thomas M. Haggarty. On appeal, Sandra raises four issues, which we restate as:

1. Whether the trial court erroneously determined when Thomas breached their premarital agreement (hereinafter "Agreement") by failing to maintain a joint checking account with funds for paying monthly ordinary living expenses;

2. Whether the trial court erred when it denied Sandra's request for prejudgment interest on the damages awarded for Thomas's breach of the Agreement's requirement that he maintain that joint checking account;

3. Whether the trial court abused its discretion when it denied Sandra's objection and request for relief from her own "Release of Judgment" documents (hereinafter "Releases"); and

4. Whether the trial court erred when it awarded attorneys' fees to Thomas in its order denying Sandra's request for relief from her own Releases.

On cross-appeal, Thomas asserts one issue, which we restate as: Whether the trial court erred when it used parol evidence to determine the meaning of "ordinary living expenses" as used in the Agreement's requirement that he maintain a joint checking account with Sandra. Because this cross-appeal issue implicates the validity of the trial court's interpretation of Thomas's obligation to maintain a joint checking account, we will address Thomas's cross-appeal issue as a second part of Sandra's first issue. For reasons discussed more fully below, we affirm.[1]

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[1] Concurrent with our issuance of this decision, we issued an order denying Sandra's motion to file a sur-reply brief to respond to alleged new arguments that Thomas raised in his cross-appellant's reply brief.

Facts and Procedural History

[2] On June 30, 2000, in contemplation of their impending marriage, Thomas and Sandra[2] entered an Agreement that contained the following pertinent provisions:

> 2. **Thomas M. Haggarty's Separate Property**.
>
> For purposes of this Agreement, Thomas M. Haggarty's Separate Property shall mean the following: any and all assets and properties owned by him legally or beneficially, which are now owned or hereafter acquired, and including without limitation any subsequent income from or appreciation in value of such assets or properties. His Separate Property shall specifically include all property which he inherits. His Separate Property shall not include property titled or owned jointly by and between the parties, which joint property shall include property that was acquired with Separate Property or income from Separate Property.

Because we do not address new arguments raised in a reply brief, *Moriarty v. Moriarty*, 150 N.E.3d 616, 631 n.10 (Ind. Ct. App. 2020), *trans. denied*, Sandra's attempt to refute those arguments on the merits is superfluous.

In addition, concurrent with the issuance of this decision, we also issue an order granting Thomas' motion to strike the affidavit of the Clerk of the Allen County Circuit and Superior Courts, which affidavit Sandra filed in support of an argument she made in her reply brief. As Thomas notes, we do not consider on appeal any evidence that was not presented to the trial court. *See Morey v. Morey*, 49 N.E.3d 1065, 1073 n.3 (Ind. Ct. App. 2016) ("Exhibit 16 was not admitted into evidence at the hearing and may not be submitted for the first time on appeal."). *See also* Indiana Appellate Rule 27 (defining Record on Appeal as "the Clerk's Record and all proceedings before the trial court"). We accordingly strike that affidavit and ignore any arguments in Sandra's reply brief that rely on the assertions within that affidavit. *See*, *e.g.*, *Watts Water Techs., Inc. v. State Farm Fire & Cas. Co.*, 66 N.E.3d 983, 988 n.1 (Ind. Ct. App. 2016) (granting party's motion to strike a "Declaration" that was not part of the record on appeal).

[2] The Agreement uses Sandra's maiden name and refers to her as "Sandy Reilly."

3. **Sandy Reilly's Separate Property**.

For purposes of this Agreement, Sandy Reilly's Separate Property shall mean the following: any and all assets and properties owned by her legally or beneficially, which are now owned or hereafter acquired, and including without limitation any subsequent income from or appreciation in value of such assets or properties. Her Separate Property shall specifically include all property which she inherits. Her Separate Property shall not include property titled or owned jointly by and between the parties, which joint property shall include property that was acquired with Separate Property or income from Separate Property.

4. **Rights of the Parties Upon Dissolution of Marriage**. If the intended marriage of the parties is terminated by decree of dissolution of marriage or a decree of legal separation (or any other court order terminating their marriage) ("Marriage Dissolution"), the parties agree as follows with respect to the Marriage Dissolution proceeding:

a. Subject to the provisions of 4c., Sandy Reilly agrees that Thomas M. Haggarty's Separate Property shall not be considered marital property, property of the parties, or an asset subject to division or allocation by a court. Thomas M. Haggarty's Separate Property shall be ignored and not considered by the court in the Marriage Dissolution proceeding for purposes of dividing or disposing of marital property or property of the parties or for purposes of considering spousal maintenance or alimony. Sandy Reilly further agrees that she shall not seek, demand or claim any interest in, share of, or credit for Thomas M. Haggarty's Separate Property. In any Marriage Dissolution proceeding, Thomas M. Haggarty shall be able to keep and retain his Separate Property in the same as though no marriage had ever been entered into by the

parties. Sandy Reilly further agrees that she shall not allege or claim that, because Thomas M. Haggarty is entitled to keep his Separate Property, and as a result of "economic circumstances" or otherwise, (i) she is entitled to receive or be allocated other marital property or (ii) Thomas M. Haggarty should be required to pay to her any sum of money, except Sandy Reilly shall be entitled to reasonable maintenance during the time the Marriage Dissolution Proceeding is pending but not to exceed six months in duration and Sandy Reilly shall not be prohibited from seeking payment from Thomas M. Haggarty of part or all of her attorney fees in a Marriage Dissolution proceeding.

b. Thomas M. Haggarty agrees that Sandy Reilly's Separate Property shall not be considered marital property, property of the parties, or an asset subject to division or allocation by a court. Sandy Reilly's Separate Property shall be ignored and not considered by the court in the Marriage Dissolution proceeding for purposes of dividing or disposing of marital property or property of the parties or for purposes of considering spousal maintenance or alimony. Thomas M. Haggarty further agrees that he shall not seek, demand or claim any interest in, share of, or credit for Sandy Reilly's Separate Property. In any Marriage Dissolution proceeding, Sandy Reilly shall be able to keep and retain her Separate Property the same as though no marriage had ever been entered into by the parties. Thomas M. Haggarty further agrees that he shall not allege or claim that, because Sandy Reilly is entitled to keep her Separate Property, and as a result of "economic circumstances" or otherwise, (i) he is entitled to receive or be allocated other marital property, (ii) Sandy Reilly should be required to pay to him any sum of money, or (iii) he is entitled to receive alimony, maintenance of any type, or *attorneys' fees*.

* * * * *

> 9. **Joint Property.** The parties are not prohibited by this Agreement from transferring their Separate Property into joint ownership with each other. Thomas M. Haggarty agrees to transfer the residence he is currently having constructed into joint ownership with Sandy Reilly on or before January 1, 2001, after which date the residence shall be considered joint property for purposes of this Agreement. Thomas M. Haggarty further agrees to maintain a checking account titled jointly with Sandy Reilly with an average balance sufficient to pay ordinary living expenses for a month. Property titled or owned jointly by and between the parties (i) shall become the sole property of the surviving party in the event of the death of one party and (ii) shall be considered marital property in the event of a Marriage Dissolution, to be divided equally between them. For purposes of this paragraph, all household furniture, appliances and furnishings, now owned or hereafter acquired, shall be deemed to be owned jointly by the parties.

(Appellant's App. Vol. 2 at 32-34, 37.) Thomas and Sandra married on July 15, 2000. Sandra had a son from a prior marriage who lived with Thomas and Sandra during their marriage. In addition, the marriage produced a daughter, who was born January 13, 2004.

[3] On March 22, 2018, Sandra filed a petition for dissolution of marriage. On November 21, 2018, Sandra filed motion for partial summary judgment in which she argued Thomas breached their Agreement by failing to maintain the joint checking account for ordinary living expenses, and she filed designated evidence in support thereof. Thomas filed a response in opposition to Sandra's

motion and a designation of evidence. After Sandra filed a reply brief, the trial court denied Sandra's motion on September 27, 2019.[3]

[4] The court set trial on the matter for October 8, 9, and 10, 2019. Sandra filed a motion requesting the court enter special findings of fact and conclusions of law pursuant to Trial Rule 52. Following the hearing, the magistrate took the case under advisement and ordered the parties to submit proposed findings and conclusions. The parties filed those proposed findings and conclusions, but the magistrate did not timely issue an order. As a result, Sandra filed a praecipe with the Indiana Supreme Court pursuant to Indiana Trial Rule 53. The Indiana Supreme Court removed the magistrate and remanded the case to Judge Felts.

[5] On May 22, 2020, Judge Felts entered a dissolution order that included the following pertinent Findings of Fact:

> 8. During their marriage, the parties maintained separate finances. [Sandra] had a separate bank account at Three Rivers Federal Credit Union. [Thomas] had a separate bank account at PNC Bank.
>
> 9. [Sandra] deposited her income into her separate bank account at Three Rivers Federal Credit Union. Further, [Sandra] deposited child support payments made by her prior born child's father into her separate account. [Sandra] used the funds she deposited into her Three Rivers Federal Credit Union

[3] On August 12, 2019, the trial court examined and approved the parties' partial settlement agreement that resolved child custody and support issues for the daughter of the marriage.

account to purchase personal property and for personal expenses. [Sandra]'s Three Rivers Federal Credit Union accounts are her separate property under the Premarital Agreement.

10. [Thomas] deposited his income into his separate bank account. [Thomas] used the funds he deposited into his PNC Bank account for his personal expenses and all the household expenses such as utilities, maintenance, and improvements to the marital home and food. [Thomas]'s PNC Bank accounts are his separate property under the Premarital Agreement.

* * * * *

14. The Premarital Agreement required [Thomas] to maintain a checking account titled jointly with [Sandra] with an average balance sufficient to pay ordinary living expenses.

15. On January 31, 2014, following specific discussion of this account during marriage counseling, [Thomas] and [Sandra] opened a joint bank account (#1126) at PNC Bank (hereinafter "PNC Joint Account"). To open the account, the parties had to physically go into the bank and open the account.

16. [Thomas] initially funded this account with $2,700.00. No further deposits were made. The PNC Joint Account remained open with a positive account balance through and including March 2019 on which date [Thomas] closed the account.

17. [Sandra] paid [son's] expenses and [daughter's] expenses from her Three Rivers Federal Credit Union Account (account number: xxx5203).

18. [Thomas] paid the parties' ordinary expenses and [daughter's] expenses from his PNC Bank accounts.

19. [Sandra] paid ordinary living expenses for the period of time January 31, 2014 through March 22, 2018 as set forth in [Sandra]'s Exhibit 34 C, D and E (excepting certain listed expenses for [son] and the purchase of the 2016 Chevrolet Colorado) as follows:

2014	$21,721.83
2015	$56,402.44
2016	$58,304.67
2017	$57,820.38
2018	$12,588.57

These amounts were not ascertainable at the time they were accrued as [Sandra] did not so advise [Thomas] at any time until the filing of this cause of action.

(*Id*. at 20-22) (formatting in original).

[6] Based thereon, the court entered the following pertinent Conclusions:

3. It is foreseeable and reasonably contemplated that "ordinary living expenses" as stated in the parties' Premarital Agreement would include expenses incurred for the parties, and subsequent children and [Sandra]'s child from her previous marriage who primarily resided with the parties during their marriage. *In Re Coyle*, 671 N.E.2d 938, 944 (Ind.Ct.App. 1996), *Morrison v. Sadler*, 821 N.E.2d 15 (Ind.Ct.App. 2005).

4. [Thomas]'s duty to "maintain" a checking account from which ordinary living expenses would be paid began upon the establishment of the account on January 31, 2014.

5. "Ordinary living expenses" include "all" expenses or "everything" (as testified by the parties), supported by various statutory (CFR for example) and case authorities from several jurisdictions.

6. [Thomas]'s failure to maintain the checking account after it was opened and initially funded on January 31, 2014 constitutes a breach of the parties' Premarital Agreement.

7. An award of prejudgment interest in a breach of contract action is warranted if the amount of the claim rests upon a simple calculation and the terms of the contract make such a claim ascertainable. An award of prejudgment interest is proper when the trier of fact does not have to exercise judgment in order to assess the amount of damages. Therefore, an award of prejudgment interest is generally not considered a matter of discretion." WESCO Distribution, Inc. v. Arcelormittal Indiana Harbor LLC, 23 N.E.3d 682, 714 (Ind. Ct. App. 2014) (internal citations omitted).

(*Id*. at 25-26) (formatting & errors in original).

[7] The trial court then ordered, in pertinent part:

8. [Thomas] is obligated to [Sandra] in satisfaction of paragraph 9 of the Premarital Agreement in the sum of $206,837.89.

9. [Sandra]'s claim for prejudgment interest is DENIED.

(*Id*. at 27.) In total, Thomas was ordered to pay $498,997.49 pursuant to the Agreement, $1,183.50 for tax refunds, and $10,000 for attorney fees.

[8] The next day, April 23, 2020, the trial court's order was distributed to the parties. Thomas's counsel sent three checks[4] to cover the judgment against Thomas, along with three releases of judgment, on April 27, 2020.[5] On May 6, 2020, Sandra signed three Releases composed by her counsel, and the Releases were filed with the trial court on May 13, 2020. The Releases provided:

> **RELEASE OF JUDGMENT**
>
> Comes now Sandra Haggarty, and hereby releases the judgment entered in the above-captioned cause of action against Respondent, Thomas M. Haggarty, in the amount of [one of the three amounts paid] as stated in the parties' Decree of Dissolution of Marriage entered by the Court on April 22, 2020, as the same has been paid and satisfied.

(*Id*. at 234-36.)

[9] Then, on May 27, 2020, Sandra filed objections to her own Releases. Therein she alleged:

> The Petitioner objects because the Judgment payments made by Respondent did not include accrued interest, the accrued interest

[4] The three checks were $498,997.49 ordered pursuant to the Agreement, $1,183.50 for tax refunds, and $10,000 for attorney fees.

[5] Thomas asserts all three checks had cleared the bank account before May 2, 2020. (*See* Appellant's App. Vol. 3 at 9.) However, Exhibits B and C, which would have verified that assertion, are missing from the Appendix. (*See id.* at 17-18 (where attachments skip from Exhibit A to Exhibit I).)

was not waived by the Petitioner and the Respondent refuses to pay the accrued interest. Petitioner states:

1. Each of the three (3) "Release of Judgment" filed on May 13, 2020 correctly reflect payment in full by the Respondent of the Judgment amount reflected in the Release and in the April 22, 2020 Decree of Dissolution, but without accrued interest.

2. Pursuant [to] Trial Rule 58(D), payment in full of a Judgment includes accrued interest and court costs, if any.

3. The Petitioner has made demand upon the Respondent for accrued interest and he has refused to pay the same.

Wherefore, the Petitioner respectfully submits this objection to each of the three (3) "Release of Judgment" previously filed and requests the withdrawal of the Releases of Judgments of May 13, 2020 for the reason that Respondent has not paid and refuses to pay the accrued interest to which Petitioner is entitled.

(*Id*. at 237.) That same day, Thomas filed objections to Sandra's objections. In his objections, Thomas asserted Sandra could not be heard to object because her Releases indicate the judgments had "been paid and satisfied." (*Id*. at 239) (emphases in original). On September 8, 2020, the court held a telephonic conference regarding the objections and took the matter under advisement.

[10] On September 10, 2020, Sandra filed a "Statement of Petitioner, Sandra Haggarty, Notifying Clerk of Partial Payment of Judgment[,]" (*id*. at 244) (full capitalization removed), and motion for hearing on her May 27, 2020, objections. On September 15, 2020, Thomas filed an objection to Sandra's

request for further hearing and a request for attorneys' fees. The court held a second hearing on October 1, 2020. On October 2, 2020, the court entered an order that provided:

> As the Court find's Petitioner's releases are unambiguous, Petitioner's Objection to Satisfaction/Release of Judgments is DENIED. Respondent's Request for Attorney Fees in the amount of $2,610.75, per his affidavit filed on October 1, 2020, is GRANTED.

(*Id*. at 28) (formatting in original).

Discussion and Decision

[11] Before we address the issues raised by the parties, we must settle a disagreement about whether the trial court made, or could make, findings of fact that required credibility determinations or the weighing of evidence. Sandra insists: "Judge Felts' judgment does not include any credibility determinations or suggest that determination of any material issue required weighing conflicting evidence or deciding the credibility of testimony." (Sandra's Reply Br. at 14.) She asserts Judge Felts could not have done so because he "*did not hear or observe the testimony of the witnesses*." (*Id*. at 13 (italics in original).)

[12] In 2014, our Indiana Supreme Court held a father's due process rights were violated when a successor magistrate, who reviewed the record but had not heard the evidence at the hearing, entered the findings and conclusions

recommending termination of father's parental rights. *In re I.P.*, 5 N.E.3d 750, 751 (Ind. 2014). The Court explained:

> A party is entitled to a determination of the issues by the judge who heard the evidence, and, where a case is tried to a judge who resigns before determining the issues, a successor judge cannot decide the issues or enter findings without a trial *de novo*. When a successor judge who did not hear the evidence or observe the witnesses' demeanor attempts to weigh evidence and make credibility determinations, the judge "is depriving a party of an essential element of the trial process."
>
> It is precisely because the judge or magistrate presiding at a termination hearing has a superior vantage point for assessing witness credibility and weighing evidence that we give great deference to a trial court's decision to terminate a parent's rights. But in this case, the magistrate who reported recommended findings and conclusions to the judge did not hear the evidence or observe the witnesses firsthand.

Id. at 752 (italics in original; internal citations omitted). That language suggests, as Sandra asserts, that Judge Felts could not have determined any issues of credibility without holding a hearing to "observe the witnesses firsthand." *Id*.

[13] However, the Court in *I.P.* also noted:

> Father did not agree to have [the successor magistrate] recommend findings and conclusions based on a review of the record. *See Farner v. Farner*, 480 N.E.2d 251, 257-58 (Ind. Ct. App. 1985) (concluding parties may stipulate to have a successor judge who did not preside at evidentiary hearing decide the issues based on the record).

Id. Similarly, in another termination case decided the same day based on nearly identical facts, our Indiana Supreme Court noted:

> Nor did Mother waive her due process right by failing to object, as [the Department of Child Services] alleged. Rather, it appears Mother was unaware of [the second magistrate's] involvement in the case until after entry of the termination order, which she challenged on appeal. In accord with *In re I.P.*, we find the procedure used by the trial court violated Mother's due process rights.

In re S.B., 5 N.E.3d 1152, 1154 (Ind. 2014). Thus, though neither the Father in *I.P.* nor the Mother in *S.B.* waived the right to due process by agreeing that a successor magistrate could enter findings based on the record of the hearing, our Indiana Supreme Court reaffirmed the nearly thirty-year-old holding in *Farner* that parties can stipulate to having a successor judge rule based on the record without holding a new hearing. *See id*. (citing *Farner*, 480 N.E.2d at 257-58, to support that "parties may stipulate to have successor judge who did not preside at evidentiary hearing decide the issues based on the record").

[14] Herein, after the Indiana Supreme Court assigned the case to Judge Felts, he entered an order that provided:

> On February 3, 2020, the Indiana Supreme Court entered its Order Remanding Jurisdiction, directing this cause be remanded to the Honorable Thomas J. Felts to take further action in the cause. Accordingly, Judge Felts will listen to the recording of the October 8, 2019 hearing regarding the Verified Petition for Dissolution of Marriage (filed March 22, 2018), review any exhibits admitted into evidence and enter a dispositional Order

> unless either party objects by February 15, 2020. If either party objects, a new hearing shall be scheduled.

(Appellant's App. Vol. 2 at 233.) Neither Thomas nor Sandra objected to Judge Felts ruling based on the recording of the hearing and the admitted exhibits. Therefore, Sandra waived the due process requirement that the fact-finder observe the witnesses at the hearing. *See Farner*, 480 N.E.2d at 257 ("like other elements of due process, this right [requiring the trier of fact hear the evidence before determining credibility or weighing the evidence] may be waived"). We accordingly reject Sandra's assertion that Thomas needed to request a new hearing before Judge Felts could determine credibility or weigh evidence, and we will review Judge Felts' Findings and Conclusions in the same manner as any other judgment entered by a trier of fact after trial has been held.

[15] Sandra requested the entry of findings and conclusions. In such a circumstance, our standard of review is well settled:

> First, we determine whether the evidence supports the findings and second, whether the findings support the judgment. In deference to the trial court's proximity to the issues, we disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. We do not reweigh the evidence, but consider only the evidence favorable to the trial court's judgment. Challengers must establish that the trial court's findings are clearly erroneous. Findings are clearly erroneous when a review of the record leaves us firmly convinced a mistake has been made. However, while we defer substantially to findings of fact, we do not do so to conclusions of law. Additionally, a judgment is clearly erroneous under Indiana Trial Rule 52 if it relies on an incorrect legal standard. We evaluate

> questions of law de novo and owe no deference to a trial court's determination of such questions.

Moriarty v. Moriarty, 150 N.E.3d 616, 626 (Ind. Ct. App. 2020) (quoting *Trabucco v. Trabucco*, 944 N.E.2d 544, 548-49 (Ind. Ct. App. 2011), *trans. denied*), *trans. denied*. We accept unchallenged findings as true, *M.M. v. A.C.*, 160 N.E.3d 1133, 1135 (Ind. Ct. App. 2020), and we will affirm "if the unchallenged findings are sufficient to support the judgment." *Moriarty*, 150 N.E.3d at 626.

[16] Finally, two of the issues raised by the parties require consideration of the language found in the premarital agreement entered by the parties. "Premarital agreements have long been recognized as valid contracts in Indiana, 'as long as they are entered into freely and without fraud, duress, or misrepresentation, and are not unconscionable.'" *Fetters v. Fetters*, 26 N.E.3d 1016, 1020 (Ind. Ct. App. 2015) (quoting *Rider v. Rider*, 669 N.E.2d 160, 162 (Ind. 1996)), *trans. denied*. Accordingly, "[s]tandard principles regarding contract formation and interpretation apply to premarital agreements." *Id*.

> "To interpret a contract, a court first considers the parties' intent as expressed in the language of the contract." A court should read all of the provisions "as a whole to accept an interpretation that harmonizes the contract's words and phrases and gives effect to the parties' intentions as established at the time they entered the contract." As premarital agreements are favored by the law, they will be liberally construed to realize the parties' intentions. If the terms of the contract are unambiguous, "the intent of the parties must be determined from the four corners of the document." If the terms are ambiguous, the court may consider

> parol evidence to clarify the ambiguity. "The terms of a contract are ambiguous only when reasonably intelligent persons would honestly differ as to the meaning of those terms."

Thompson v. Wolfram, 162 N.E.3d 498, 504 (Ind. Ct. App. 2020) (internal citations omitted), *reh'g denied*.

1. Joint Checking Account

[17] Sandra and Thomas raise separate arguments alleging the trial court erred in its interpretation of the Agreement's requirement for a joint checking account. The Agreement provided: "Thomas M. Haggarty further agrees to maintain a checking account titled jointly with Sandy Reilly with an average balance sufficient to pay ordinary living expenses for a month." (Appellant's App. Vol. 2 at 37.) Sandra asserts the trial court improperly interpreted Thomas' duty to "maintain" the checking account, while Thomas asserts the court misinterpreted the meaning of "ordinary living expenses." We address each argument separately.

A. Date Obligation to Maintain a Joint Checking Account Accrued

[18] Regarding the joint checking account, the trial court concluded:

> 4. [Thomas]'s duty to "maintain" a checking account from which ordinary living expenses would be paid began upon the establishment of the account on January 31, 2014.
>
> * * * * *

6. [Thomas]'s failure to maintain the checking account after it was opened and initially funded on January 31, 2014 constitutes a breach of the parties' Premarital Agreement.

(*Id*. at 25.) In support of its conclusions, the trial court found:

14. The Premarital Agreement required [Thomas] to maintain a checking account titled jointly with Sandy Reilly with an average balance sufficient to pay ordinary living expenses.

15. On January 31, 2014, following specific discussion of this account during marriage counseling, [Thomas] and [Sandra] opened a joint bank account (#1126) at PNC Bank (hereinafter "PNC Joint Account"). To open the account, the parties had to physically go into the bank and open the account.

16. [Thomas] initially funded this account with $2,700.00. No further deposits were made. The PNC Joint Account remained open with a positive account balance through and including March 2019 on which date [Thomas] closed the account.

* * * * *

18. [Thomas] paid the parties' ordinary expenses and [daughter's] expenses from his PNC Bank accounts.

19. [Sandra] paid ordinary living expenses for the period of time January 31, 2014 through March 22, 2018 as set forth in [Sandra]'s Exhibit 34 C, D and E (excepting certain listed expenses for [prior-born son] and the purchase of the 2016 Chevrolet Colorado) as follows:

2014 $21,721.83

2015	$56,402.44
2016	$58,304.67
2017	$57,820.38
2018	$12,588.57

(*Id*. at 21-22.)

[19] Sandra argues the trial court erred by concluding that Thomas's obligation to maintain the checking account began when the account was established in 2014, rather than in July 2000 when they married. According to Sandra, the court's decision improperly limited her breach of contract claim because the term "maintain" also necessarily includes a requirement that Thomas bring the account into existence, such that Thomas should be held liable for all the years in which he failed to set up the account. (*See* Appellant's Br. at 21.)

[20] Contrary to Sandra's argument, we find no explicit or implicit finding in the trial court's order suggesting a duty to "maintain" the checking account did not also include an obligation to "create" the checking account. Instead, the court found "the parties had to physically go into the bank" together to open the account, which did not happen until January 31, 2014. (Appellant's App. Vol. 2 at 21.) As Sandra herself notes in her brief, the parties provided conflicting evidence and arguments at trial about which of them was to blame for the account not being created before 2014. (*See* Appellant's Br. at 23 (noting Thomas "asserted he was relieved of the obligation from July 15, 2000 until

January 31, 2014 due to 'misconduct' by Sandra[,]" who did not go to the bank).) Just as Sandra could not set up the joint account by herself at the bank, Thomas also was not able. While Sandra may wish the court had ruled in her favor based on the conflicting evidence in the record, we cannot reweigh the evidence or assess the credibility of the witnesses. *See Bringle v. Bringle*, 150 N.E.3d 1060, 1073 (Ind. Ct. App. 2020) ("We may not reweigh the evidence or assess the credibility of the witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property."), *trans. denied*. Instead, we affirm the trial court's judgment if it is supported by conclusions that are supported by findings, which themselves are supported by the evidence. *Id*. at 1064-65. As Thomas' testimony supports the court's findings and judgment, we will not disturb the court's judgment as to this issue.[6] *See*, *e.g.*, *id*. at 1074 (rejecting, as a request to reweigh evidence, a wife's assertion that "various evidence presented to the trial court would have better supported an unequal division of the marital estate in her favor").

B. Meaning of "Ordinary Living Expenses"

[6] Moreover, we note that the trial court's findings would not have supported awarding additional breach of contract damages to Sandra for the years from 2000-2014 because, while the court found Sandra paid the ordinary living expenses from 2014 to 2018, the trial court also found "[Thomas] paid the parties' ordinary expenses and [daughter's] expenses from his PNC Bank accounts." (Appellant's App. Vol. 2 at 22.) (*See also id*. at 20 ("[Thomas] used the funds he deposited into his PNC Bank account for his personal expenses and all the household expenses such as utilities, maintenance, and improvements to the marital home and food.").) As the court found Thomas paid the ordinary living expenses in all other years, Sandra would not have been entitled to additional damages for those years.

[21] In his cross-appeal, Thomas asserts the trial court erred when it considered parol evidence to determine the meaning of "ordinary living expenses" in the Agreement's requirement that Thomas "maintain a checking account titled jointly with Sandy Reilly with an average balance sufficient to pay ordinary living expenses for a month." (Appellant's App. Vol. 2 at 37.) The trial court concluded:

> 3. It is foreseeable and reasonably contemplated that "ordinary living expenses" as stated in the parties' Premarital Agreement would include expenses incurred for the parties, any subsequent children and [Sandra]'s child from her previous marriage who primarily resided with the parties during their marriage.
>
> * * * * *
>
> 5. "Ordinary living expenses" include "all" expenses or "everything" (as testified by the parties), supported by various statutory (CFR for example) and case authorities from several jurisdictions.

(*Id*. at 25) (internal citations omitted).

[22] As Thomas notes, if a contract's terms are unambiguous, "the intent of the parties must be determined from the four corners of the document." *Schmidt v. Schmidt*, 812 N.E.2d 1074, 1080 (Ind. Ct. App. 2004). Trial courts may consider parol evidence to clarify a contract only "[i]f the terms are ambiguous," and "'terms of a contract are ambiguous only when reasonably

intelligent persons would honestly differ as to the meaning of those terms.'" *Thompson*, 162 N.E.3d at 504 (quoting *Schmidt*, 812 N.E.2d at 1080).

[23] The contract term at issue is "ordinary living expenses." Thomas suggests the court should have been able to construct the meaning of that term from the four corners of the Agreement, but no clause in the Agreement defines the meaning of that term. Moreover, Thomas notes he testified to many expenses that he did not consider to be ordinary – "expenses related to Sandra's four dogs; Sandra's tithing to her church; and Sandra's entertainment expenses" (Appellee's Br. at 32), while Sandra testified that she could not think of "an extraordinary expense." (*Id*.) While Sandra's assertion of all expenses being ordinary may be unreasonable to Thomas, reasonable people certainly could believe pets, charitable donations, and entertainment are ordinary living expenses. Accordingly, we hold that "ordinary living expenses" as used in this Agreement was an ambiguous term and the trial court did not err by considering parol evidence to determine its meaning.[7] *See*, *e.g.*, *Carroll v. Long Tail Corp.*, 167 N.E.3d 750, 760 (Ind. Ct. App. 2021) (holding non-solicitation agreement contained ambiguity that trial court needed to resolve with parol evidence).

[7] To the extent Thomas' argument could be read to assert the court should have adopted the definition of ordinary living expenses to which Thomas testified, we reject the argument as an improper request that we reweigh the evidence. *See*, *e.g.*, *Bringle*, 150 N.E.3d at 1074 (rejecting, as a request to reweigh evidence, a wife's assertion that "various evidence presented to the trial court would have better supported an unequal division of the marital estate in her favor").

2. Prejudgment Interest

[24] Sandra next argues the trial court erred by denying her request for prejudgment interest on the contract damages awarded for Thomas' failure to maintain the joint checking account. Courts award prejudgment interest "to fully compensate an injured party for the lost use of money." *U.S. Rsch. Consultants, Inc. v. Cnty. of Lake*, 89 N.E.3d 1076, 1087 (Ind. Ct. App. 2017) (quoting *Song v. Iatarola*, 76 N.E.3d 926, 939 (Ind. Ct. App. 2017), *trans. denied*), *trans. denied*.

> Prejudgment interest is appropriate in a breach of contract action when "the amount of the claim rests upon a simple calculation and the terms of the contract make such a claim ascertainable." *Olcott Int'l & Co. v. Micro Data Base Sys., Inc.*, 793 N.E.2d 1062, 1078 (Ind. Ct. App. 2003), *trans. denied*. The award of prejudgment interest is considered proper when the trier of fact does not have to exercise judgment in order to assess the amount of damages. *Town of New Ross v. Ferretti*, 815 N.E.2d 162, 170 (Ind. Ct. App. 2004) (citing *Noble Roman's, Inc. v. Ward*, 760 N.E.2d 1132, 1140 (Ind. Ct. App. 2002)). Examples of such cases where prejudgment interest is appropriate include those for breach of contract when the damages were principal payments made under a promissory note, *Tracy v. Morell*, 948 N.E.2d 855, 867 (Ind. Ct. App. 2011), the amount of a mechanics' lien for a contractor's unpaid bills for a remodeling project, *Hayes v. Chapman*, 894 N.E.2d 1047, 1054-55 (Ind. Ct. App. 2008), *trans. denied*, and an amount stipulated to at a damages hearing, *Noble Roman's, Inc.*, 760 N.E.2d at 1140. In all of these cases, the amount of damages was clear and did not require any interpretation or judgment on the part of the trier of fact.

Kummerer v. Marshall, 971 N.E.2d 198, 201 (Ind. Ct. App. 2012), *trans. denied*.

[25] Sandra asserts she is entitled to prejudgment interest because the court needed only a "simple calculation" to add up "a long string of small or modest purchases or payments under the very broad umbrella of 'ordinary living expenses', verified by check or bank record or credit card use." (Appellant's Br. at 37.) However, while the premarital agreement indicated Thomas was to keep sufficient funds in the account to cover ordinary living expenses, the contract neither specified the amount he was to deposit each month nor defined which expenses were ordinary living expenses. The trial court therefore was required to exercise its discretion to determine the amount that should have been deposited each month to cover ordinary living expenses,[8] making Sandra ineligible for prejudgment interest. *See*, *e.g.*, *Kummerer*, 971 N.E.2d at 202 (holding appellant was not entitled to prejudgment interest for breach of contract regarding split of attorney fees because trial court was required to determine whether equal split of attorney fees was reasonable under the circumstances).

[8] Sandra takes issue with the trial court's finding: "These amounts were not ascertainable at the time they were accrued as [Sandra] did not so advise [Thomas] at any time until the filing of this cause of action." (Appellant's App. Vol. 2 at 22.) Sandra asserts that finding demonstrates the trial court erred because it denied her prejudgment interest on the basis that she did not give Thomas "actual, subjective knowledge of the damages." (Appellant's Br. at 35.) (*See also* Appellant's Br. at 36 (asserting court denied interest based "solely on Sandra's failure to inform Thomas of a running total of her contract damages").) Regardless whether Sandra ever informed Thomas of her calculation of the running total, as we discussed *supra*, the court's denial of prejudgment interest is required by the first half of the court's finding – "These amounts were not ascertainable at the time they were accrued[.]" (Appellant's App. Vol. 2 at 22.)

3. Objection to Releases from Judgment

[26] The next issue Sandra raises is whether the trial court erred by denying her objections to her own Releases. The court denied her objections after finding Sandra's Releases were "unambiguous." (Appellant's App. Vol. 2 at 28.) Sandra alleges the court erred in so finding.

[27] In support, Sandra first notes that Trial Rule 58(D) provides: "Upon payment in full of a judgment, including accrued interest and court costs, the judgment creditor shall file a satisfaction/release of judgment and the Clerk shall note the satisfaction/release of the judgment on the CCS and on the judgment docket." Sandra asserts that, because Thomas's payments did not include "accrued interest and court costs," he should be precluded "from credit for 'payment in full.'" (Appellant's Br. at 39.) However, Sandra's argument relies on a tortured reading of Rule 58(D), because that Rule does not invite an inference that a creditor's release is partial if interest and court costs were not included in the debtor's payment of the judgment. Rather, the Rule explicitly instructs creditors to file a satisfaction/release only after receiving payment in full, which includes interest and court costs.[9] Sandra's argument is not supported by Trial Rule 58.

[9] Thus, Sandra's lengthy legal arguments about why she was entitled to post-judgment interest are irrelevant. While she may have had a legal right to post-judgment interest, she waived any right to additional recovery on the judgment when she filed the Releases.

[28] Nor is Sandra's position supported by her citation to *RJH of Florida, Inc. v. Summit Acct. & Comput. Servs.*, 725 N.E.2d 972 (Ind. Ct. App. 2000). At issue therein was whether a party's filing of a notice of satisfaction of the initial judgment ordered by the trial court, while its separate motion for appellate attorney fees and costs was pending, forfeited its claim for appellate attorney fees and costs. We held the release was ambiguous as to whether it released the separate claim for appellate attorney fees and costs, and we held it did not release that separate claim. *Id*. at 974. Herein, by contrast, Sandra's claim for post-judgment interest was not a claim that arose separate from the trial court's initial judgment; it was part of the very judgment that Sandra released. *See* T.R. 58(D) (defining judgment as including accrued interest). Thus, the trial court did not err when it denied her objection to her Releases.

4. Attorneys' Fees

[29] Finally, Sandra asserts the trial court erred when it awarded attorneys' fees to Thomas in the October 2, 2020, order denying Sandra's motions to withdraw her Releases. A trial court may award attorneys' fees in marital dissolution actions, *see* Ind. Code § 31-15-10-1 (court "may order a party to pay a reasonable amount for the cost to the other party . . . for attorney's fees"), and whether such fees are awarded are left to the "broad discretion" of the trial court. *Eads v. Eads*, 114 N.E.3d 868, 879 (Ind. Ct. App. 2018).

> In determining whether to award attorney's fees in a dissolution proceeding, trial courts should consider the parties' resources, their economic condition, their ability to engage in gainful employment and earn income, and other factors bearing on the

> reasonableness of the award. A party's misconduct that directly results in additional litigation expenses may also be considered. Consideration of these factors promotes the legislative purpose behind the award of attorney's fees, which is to ensure that a party who would not otherwise be able to afford an attorney is able to retain representation. When one party is in a superior position to pay fees over the other party, an award is proper.

Id. (internal citations omitted).

[30] Sandra argues that, in this particular case, however, the trial court did not have discretion to order her to pay attorneys' fees because their Agreement prohibits the award of attorneys' fees to Thomas. Paragraph 4(b) of the Agreement provides, in relevant part:

> Thomas M. Haggarty further agrees that he shall not allege or claim that, because Sandy Reilly is entitled to keep her Separate Property, and as a result of "economic circumstances" or otherwise, (i) he is entitled to receive or be allocated other marital property (ii) Sandy Reilly should be required to pay to him any sum of money, or (iii) he is entitled to receive alimony, maintenance of any type, or *attorneys' fees*.

(Appellant's App. Vol. 2 at 34) (italics added).

[31] We disagree with Sandra's reading of that clause in Paragraph 4(b). That clause indicates Thomas may not claim he is entitled to attorneys' fees "because Sandy Reilly is entitled to keep her Separate Property, and as a result of 'economic circumstances' or otherwise." (*Id*.) Thomas's request for attorneys' fees did not arise "because Sandy Reilly is entitled to keep her Separate Property." His request arose because Sandra filed multiple objections to her

own Releases and his counsel was required to attend multiple hearings to respond to her meritless objections. Thus, the Agreement does not prohibit Thomas from receiving attorneys' fees in the context in which they were awarded and, in light of the additional litigation expenses created by Sandra's post-judgment pleadings, we find no abuse of discretion in the trial court's award of attorneys' fees to Thomas. *See Goodman v. Goodman*, 94 N.E.3d 733, 741 (Ind. Ct. App. 2018) (affirming award of attorneys' fees because, in part, husband "complicated and delayed" litigation by failing to respond properly to discovery), *reh'g denied*, *trans. denied*.

Conclusion

[32] The evidence and findings support the trial court's implementation of the Agreement's requirement for Thomas to maintain a joint checking account for ordinary living expenses. Sandra was not entitled to prejudgment interest because the court had to use its discretion to determine the contract damages. The court did not err when it found her Releases were unambiguous or when it ordered her to pay Thomas's attorneys' fees for litigating her meritless assertion that the Releases meant other than what they said. For all these reasons, we affirm the judgment of the trial court.

[33] Affirmed.

Bailey, J., concurs.

Robb, J., concurs in part and dissents in part, with opinion.

IN THE
COURT OF APPEALS OF INDIANA

Sandra Haggarty,
Appellant-Petitioner,

v.

Thomas M. Haggarty,
Appellee-Respondent,

August 17, 2021

Court of Appeals Case No. 20A-DC-1877

Appeal from the Allen Circuit Court

The Honorable Thomas J. Felts, Judge

Trial Court Cause No. 02C01-1803-DC-365

Robb, Judge, concurring in part and dissenting in part.

[34] I concur with the majority on all issues but for affirming the trial court's attorneys' fee order.

[35] I do agree with the majority that Paragraph 4(b) of the Agreement does not prohibit the award of attorneys' fees to Thomas in these circumstances. However, I do not believe they are warranted. When Thomas sent checks – in the exact amounts ordered – to cover the judgment against him, he also sent releases that provided each judgment was released "as the same has been *fully* paid and satisfied." Appellant's Appendix, Volume 3 at 15-17 (emphasis added). Sandra signed and returned releases that were prepared by her counsel and were identical in all respects to those provided by Thomas except that they

stated each judgment "has been paid and satisfied." *Id.*, Volume 2 at 234-36. The word "fully" had been omitted because "payment in full of a [j]udgment includes accrued interest and court costs" and the checks were for the judgment amount only. *Id.* at 237. When it became apparent that Thomas was not going to pay accrued interest on the judgment amount, Sandra sought to withdraw the releases because despite the removal of the word "fully," "the releases might be construed as asserting full satisfaction of the judgments," which was not true. *Id.*, Volume 3 at 21. Under these circumstances, and notwithstanding the trial court's decision on the merits, I do not believe that Sandra's request to withdraw the releases was meritless, as Thomas asserted in his request for attorneys' fees. Further, I note the overall financial disparity between the parties. Accordingly, I would reverse the trial court's order that Sandra pay Thomas' attorneys' fees.