

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Eric Papp Rusby,
Appellant-Respondent

v.

Jenise Marie Prieto-Rusby,
Appellee-Petitioner

July 1, 2024

Court of Appeals Case No.
23A-DN-1341

Appeal from the Washington Circuit Court

The Honorable Larry Medlock, Judge

Trial Court Cause No.
88C01-2011-DN-128

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

Case Summary

- [1] Eric Papp Rusby appeals the trial court’s provisional order authorizing Jenise Marie Prieto-Rusby to sell their home in Honolulu, Hawaii. Eric contends the trial court exceeded its authority under Indiana Code Section 31-15-4-8 by entering such an order. We reverse.

Facts and Procedural History

- [2] Eric and Jenise married on August 5, 1991. Jenise petitioned to dissolve their marriage in September 2020. Eric and Jenise do not have children together and are both retired. Throughout their marriage, Eric and Jenise acquired a substantial amount of real estate, including a home in Honolulu.
- [3] In early 2021, the trial court granted Eric temporary exclusive possession of the Honolulu home. Under the provisional order, Eric was responsible for all expenses related to the property during the pendency of the dissolution proceedings.
- [4] In May 2023, Jenise requested the trial court authorize the sale of the Honolulu home, stating neither “party c[ould] afford to buy the other party out of the property.” *Appellant’s App. Vol. 2* at 81. The Honolulu home was valued at around \$3 million. Eric objected, explaining he wished to remain in the Honolulu home after the entry of the dissolution decree. The trial court issued an order authorizing Jenise to list and sell the Honolulu home. Eric filed a

motion to correct error and requested a stay. Soon after, Eric filed with this Court an interlocutory appeal as a matter of right. *See* Ind. Appellate Rule 14(A)(4). And this Court stayed the trial court’s order pending the resolution of this appeal.

The trial court exceeded its authority under Indiana Code Section 31-15-4-8 by ordering the sale of the Honolulu home.

- [5] We first note Jenise has not filed an appellate brief. When an appellee has not filed a brief, “we need not undertake the burden of developing an argument on the appellee’s behalf.” *Trinity Homes, LLC v. Fang*, 848 N.E.2d 1065, 1068 (Ind. 2006). “[W]e will reverse the trial court’s judgment if the appellant’s brief presents a case of prima facie error.” *Id.* Prima facie error is error “at first sight, on first appearance, or on the face of it.” *Id.* (citation omitted). If an appellant is unable to meet this burden, we will affirm.
- [6] Eric contends the trial court exceeded its authority under Indiana Code Section 31-15-4-8, which he argues does not allow a court to issue a provisional order for the sale of property. Statutory interpretation is a pure question of law subject to *de novo* review. *See Bojko v. Anonymous Physician*, 232 N.E.3d 1155, 1158 (Ind. 2024).
- [7] Provisional orders in dissolution-of-marriage actions are governed by Indiana Code chapter 31-15-4. More specifically, Indiana Code Section 31-15-4-1(a) allows either party to file a motion seeking possession of property, among other things. Further, Section 31-15-4-8(b) (1997) states:

(b) The court may issue:

(1) a temporary restraining order;

(2) a custody order; or

(3) an order for possession of property;

to the extent the court considers proper.

[8] In the context of a pending dissolution action, the plain meaning of the phrase “an order for possession of property” is an order indicating which spouse will possess particular property while the action is pending. *Rambo v. Rambo*, 187 N.E.3d 301, 303 (Ind. Ct. App 2022), *trans. denied*. In entering such an order, the court must decide which of the spouses will possess the property “*until the dissolution is finalized*.” *Id.* at 304. After all, “[a] provisional order is temporary in nature and terminates when the final dissolution decree is entered or the petition for dissolution is dismissed.” *Mosley v. Mosley*, 906 N.E.2d 928, 930 (Ind. Ct. App. 2009) (noting the trial court is “making a preliminary determination on the basis of information that is yet to be fully developed” when entering a provisional order); *see also* I.C. § 31-15-4-14 (describing the termination of a provisional order). The sale of property is not a “temporary” action—it cannot be changed as relevant information is developed.

[9] Here, the trial court entered a provisional order authorizing Jenise to list and sell the Honolulu home. As a panel of this Court explained in *Rambo*, Indiana Code Section 31-15-4-8, as currently written, does not give the trial court the

power to order the sale of property in a provisional order. *See Rambo*, 187 N.E.3d at 304 (holding the provisional-order statute allows only an order for the possession of property, not the sale).¹ “If the legislature wished to give trial courts the power to order the sale of property in a provisional order, it could have done so explicitly in the provisional-order statute, such as by authorizing ‘an order for possession *or sale* of property.’” *Id.* But it has not done so.

Conclusion

[10] Because the trial court exceeded its statutory authority by entering a provisional order for the sale of property, we reverse.

[11] Reversed.

May, J., and Vaidik, J., concur.

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¹ The panel in *Rambo* limited its holding to situations where one or both of the parties to a dissolution action object to the sale of the property. *See Rambo*, N.E.3d at 304 n.1. Otherwise, parties “are free to enter an agreed provisional order for the sale of the property.” *Id.*