

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kay J. Till,
Appellant,

v.

Steven C. Till,
Appellee.

June 14, 2022

Court of Appeals Case No.
21A-DR-2444

Appeal from the Allen Circuit
Court

The Honorable Wendy W. Davis,
Judge
The Honorable Ashley N. Hand,
Magistrate

Trial Court Cause No.
02C01-1602-DR-185

Weissmann, Judge.

[1] Kay Till filed a contempt petition against her ex-husband, Steven Till, alleging he violated the trial court’s marriage dissolution decree by removing certain personal property items from their marital home. The trial court denied Kay’s petition, including her request for attorney fees, and awarded the disputed property to Steven. We affirm the trial court’s order.

Facts

[2] As part of their marriage dissolution, Steven and Kay entered into a marital settlement agreement (Agreement) that, among other things, provided for the division of their personal property. The Agreement entitled Steven and Kay to their respective “personal artifacts and clothing” and required that they “cooperate to fairly divide their respective household goods and furnishings in a manner that is roughly equal in value.” App. Vol. II, pp. 44-46.

[3] The trial court approved the Agreement and incorporated it into its decree of dissolution (Decree). Two months later, Kay filed a contempt petition alleging Steven violated the Agreement and Decree by, among other things, removing certain personal property items from their marital home. The disputed property included a bedroom set, kitchen equipment, children’s toys, books, and decorations, most of which Steven admitted to taking.

[4] At a hearing on her petition, Kay primarily argued that the disputed items were “heirlooms” of her family and, thus, her “personal artifacts” under the Agreement. Tr. Vol. II, pp. 33, 84; *see* Exhs. pp. 107, 175-79. Steven claimed many of the items were actually his “family heirlooms.” Tr. Vol. II, pp. 58, 61;

see Exhs. pp. 107, 175-79. He also argued that, regardless of their heirloom status, the items were “household goods and furnishings” and he took “significantly less” than his 50% share under the Agreement. Tr. Vol. II, p. 57.

[5] The trial court agreed with Steven. In its order denying Kay’s contempt petition, the court stated: “[F]amily heirlooms do not meet the qualification of a personal artifact. Personal artifacts would include things such as: parties’ clothing, shoes, accessories, personal hygiene products, makeup, and the like. It would not include furnishings such as: bedroom set, table, couches, televisions and the like.” App. Vol. II, p. 22.

[6] From the evidence presented, however, the trial court could not determine how to better divide the parties’ household goods and furnishings. Because Kay did not dispute that Steven took less than a 50% share, the court ordered the parties each to retain the personal property in their possession, except for two items which Steven agreed to return to Kay. The court denied Kay’s request for attorney fees and her subsequent motion to correct error. Kay now appeals.

Discussion and Decision

I. Disputed Property

[7] Kay argues that the trial court erred in concluding her “family heirlooms” were not “personal artifacts” under the Agreement. When interpreting a marital settlement agreement, “we apply the general rules applicable to the construction of contracts.” *Ryan v. Ryan*, 972 N.E.2d 359, 364 (Ind. 2012). “[U]nless the terms of the contract are ambiguous, they will be given their plain and ordinary

meaning.” *Id.* We will not look to extrinsic evidence when presented with clear and unambiguous terms. *Id.*

[8] Kay claims the phrase “personal artifacts” is “unambiguous.” Appellant’s Br. p. 13. However, she cites no authority for the implied proposition that the phrase’s plain and ordinary meaning includes “family heirlooms.” Instead, Kay points to emails and other extrinsic evidence purportedly showing the parties’ “mutual understanding” that “family heirlooms” were “personal artifacts.” *Id.* at 14. But such evidence is only relevant if the phrase “personal artifacts” is ambiguous, which Kay does not assert. *See Ryan*, 972 N.E.2d at 364.

[9] In determining that the disputed property items were not “personal artifacts,” the trial court analyzed three separate Agreement provisions. One entitled Steven to his “personal artifacts,” another entitled Kay to hers, and the third governed the division of their “household goods and furnishings.” App. Vol. II, pp. 44-46. Reading these provisions in conjunction with one another, the court concluded that “personal artifacts” referred to personal items such as “clothing, shoes, accessories, personal hygiene products, makeup, and the like,” not household items such as a “bedroom set, table, couches, televisions and the like.” App. Vol. II, p. 22. Kay does not articulate any error in this conclusion or in the trial court’s broader decision to award Steven the disputed property.

II. Contempt

[10] Kay next argues that the trial court erred in denying her contempt petition. “The determination of whether a party is in contempt of court is a matter

within the trial court's discretion." *Piercey v. Piercey*, 727 N.E.2d 26, 31 (Ind. Ct. App. 2000). A court abuses its discretion "when its decision is against the logic and effect of the facts and circumstances before the court or is contrary to law." *Id.*

[11] "[T]o be punished for contempt of a court's order, there must be an order commanding the accused to do or refrain from doing something." *Id.* at 32. Kay claims Steven violated the Decree because he removed the disputed property from their marital home before he and Kay had cooperatively divided their household goods and furnishings. On that issue, the Agreement fully provided:

The parties shall cooperate to fairly divide their respective household goods and furnishings in a manner that is roughly equal in value. The parties acknowledge that any household goods and furnishings purchased by either party after the date of final separation (August 6, 2017) shall be deemed the separate property of the personal purchased said property and shall not be included in the marital pot to determine the 50/50 division contemplated herein. In the event that an agreement cannot be reached with respect to the distribution of certain household goods and furnishings, the parties agree to participate in mediation with Linda Chrzan as the mediator, prior to scheduling the matter for a hearing. The cost of mediation shall be split equally by the parties. In the event that mediation is necessary, it shall occur on or before March 13, 2020 to allow for resolution of the personal property issue prior to the transfer of possession of the [marital home].

App. Vol. II, p. 46.

[12] Nothing in this provision prohibited Steven from removing household goods and furnishings from the marital home before they were cooperatively divided. It provided for the property's division into equally valuable shares, and at the hearing on her contempt petition, Kay did not dispute that Steven took less than his 50%. Because Kay failed to establish that she was otherwise entitled to the disputed property, the trial court did not abuse its discretion in denying her contempt petition.

III. Attorney Fees

[13] Finally, Kay argues that Steven should have been ordered to pay her attorney fees because he has a higher weekly income. "Indiana Code section 31-15-10-1 provides that a trial court may order a party to pay a reasonable amount to the other party for the cost of maintaining or defending any action in dissolution proceedings." *Goodman v. Goodman*, 94 N.E.3d 733, 751 (Ind. Ct. App. 2018). The court, however, "is not required to award attorney fees" and "is afforded broad discretion in that regard." *Adler v. Adler*, 713 N.E.2d 348, 355 (Ind. Ct. App. 1999). "There is no abuse of discretion for the trial court not to do that which it is not required to do." *Id.* Kay fails to demonstrate how the court abused its discretion in denying her Kay's fees request.

[14] The trial court's judgment is affirmed.

Najam, J., and Vaidik, J., concur.