

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Yvonne M. Spillers
Fort Wayne, Indiana

ATTORNEY FOR APPELLEE

Ryan M. Gardner
Beers Mallers, LLP
Fort Wayne, Indiana

IN THE COURT OF APPEALS OF INDIANA

In Re: The Guardianship
of S.S.:

Susan Stillwell,
Appellant,

v.

Mark Stillwell,
Appellee.

March 2, 2023

Court of Appeals Case No.
22A-GU-1373

Appeal from the Allen Superior
Court

The Honorable Jennifer L.
DeGroote, Judge

The Honorable Phillip E.
Houk, Magistrate

Trial Court Cause No.
02D01-0907-GU-126

Memorandum Decision by Judge Robb
Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issues

[1] This case began when, in cause number 02D01-0907-GU-126 (the “Guardianship Court”), Susan Stillwell (“Mother”) and Mark Stillwell (“Father”) (together, “Parents”) sought and obtained co-guardianship status over their incapacitated daughter, S.S. Mother later filed for divorce in cause number 02D08-1708-DC-1069 (the “Dissolution Court”) and then petitioned the Guardianship Court to appoint her sole guardian of S.S. Parents’ dissolution and guardianship proceedings progressed simultaneously, through the respective courts. While the dissolution case was pending, the Guardianship Court ordered Parents to participate in a settlement conference that was facilitated by the Guardianship Court judge. At the conference, Parents agreed, among other things, that the temporary spousal maintenance that Father was paying to Mother would end when Parents’ divorce became final. And the Guardianship Court issued an order that set forth Parents’ agreement regarding the spousal-maintenance termination. Mother filed a motion asking the Guardianship Court to modify its order and remove the spousal-maintenance-termination provision. The Guardianship Court denied her motion.

[2] Mother now appeals, raising three issues, which we expand and restate as: 1) whether the Guardianship Court committed reversible error by presiding over Mother’s motion to modify the settlement conference order; 2) whether the Guardianship Court erred by taking judicial notice of Parents’ dissolution proceeding; 3) whether the Guardianship Court had the authority to decide the

spousal-maintenance issue; and 4) whether the Guardianship Court's order setting forth Parents' settlement conference agreement constitutes a binding contract that is not subject to modification by the Guardianship Court.

Concluding that the Guardianship Court did not commit reversible error by presiding over Mother's motion to modify the settlement conference order, the court did not err by taking judicial notice of Parents' dissolution proceeding, the court possessed the requisite authority to decide the spousal-maintenance issue, Parents are bound by the court's settlement conference order, and said order is not subject to modification by the Guardianship Court, we affirm.

Facts and Procedural History

[3] Parents were married on July 5, 1997, and S.S. was born on April 18, 2002.¹ On March 28, 2012, the Guardianship Court found S.S. to be an incapacitated person and appointed Parents as co-guardians. On August 9, 2017, Mother filed a petition for dissolution of the marriage in the Dissolution Court.

[4] Approximately three years later, on September 18, 2020, Mother filed in the Guardianship Court a verified motion to modify the guardianship of S.S., now an adult, and to remove Father as guardian of S.S. On October 21, Father filed a response to Mother's motion, requesting that Mother be removed as guardian of S.S. That same day, the Guardianship Court appointed a guardian ad litem.

¹ Parents are also the parents of an older child who was born in 1999.

- [5] On November 6, the Dissolution Court issued provisional orders, providing that Father pay to Mother \$211.00 per week for child support for S.S. and \$1,000.00 per month for temporary spousal maintenance.² On December 28, Parents mediated the dissolution matter but were unable to resolve any pending issues.
- [6] On June 1, 2021, the Guardianship Court ordered Parents to participate in a settlement conference (“Settlement Conference”). The Settlement Conference was facilitated by the Guardianship Court judge and took place on September 10. At the conclusion of the Settlement Conference, the Guardianship Court issued an order (“Settlement Conference Order”) setting forth the various terms to which Parents had agreed – which included the guardianship and care of S.S. – and providing that Mother would be the sole guardian of S.S. The Settlement Conference Order further provided that Parents “*agree spousal maintenance will end at the time of the final dissolution decree in [Parents’] divorce proceeding.*” Appendix of Appellant, Volume II at 44 (emphasis added).
- [7] Meanwhile, on July 7, 2021, Father filed in the Dissolution Court a petition to modify his child support obligation and noted therein that a modification of his child support obligation “also necessitate[d] a modification of the Court’s [Settlement Conference] Order regarding [his] payment of temporary spousal

² In its provisional orders, the Dissolution Court did not specify the type of spousal maintenance it awarded to Mother, but we presume that the court awarded Mother spousal maintenance under Indiana Code section 31-15-7-2(2)(B), that is, where “the spouse is the custodian of a child whose physical or mental incapacity requires the custodian to forgo employment[.]”

maintenance.” *Id.* at 101. The Dissolution Court held a hearing on the matter on December 17.

[8] On January 11, 2022, Mother filed in the Dissolution Court a “Verified Petition to Enforce Provisional Orders of Child Support and for an Order for Ongoing Child Support.” *Id.* at 103. In her petition, Mother explained that on April 18, 2021, S.S. had turned nineteen years old, and “the clerk’s office stopped collecting child support and returned a lump-sum of held child support to [Father].” *Id.* Mother asked the Dissolution Court to find that “[r]egardless of the actions of the clerk’s office,” Father remain obligated to pay child support from the date of S.S.’s nineteenth birthday, and “[pay] ongoing child support thereafter.” *Id.* at 103, 104. On January 12, Mother filed a separate petition in the dissolution proceeding, asking the Dissolution Court to award her “ongoing” spousal maintenance. *Id.* at 109.

[9] Also on January 12, 2022, Mother filed in the Guardianship Court a motion to modify the September 10, 2021, Settlement Conference Order (“Motion to Modify Settlement Conference Order”). In her motion, Mother challenged the language in the Settlement Conference Order providing that Parents had agreed Mother’s spousal maintenance would end when the final dissolution decree was issued in Parents’ divorce proceeding. Specifically, Mother

mov[ed the trial court] to modify and delete that term [because]
. . . [t]he statute which [governs] spousal maintenance in a
dissolution proceeding does not govern guardianships and should
not have been included in any agreement in the guardianship
matter. Moreover, the [G]uardianship [C]ourt has no interest or

jurisdiction over the dissolution proceedings and whether the Dissolution Court finds spousal maintenance . . . appropriate[,]
considering the facts and law in the dissolution matter.

Id. at 47. On January 27, Father filed his response to Mother's Motion to Modify Settlement Conference Order, asking the Guardianship Court to deny Mother's motion and require Mother to comply with the terms of the Settlement Conference Order. That same day, Father filed in the Dissolution Court his response to Mother's petition for ongoing spousal maintenance.

[10] On February 11 and 25, 2022, the Dissolution Court held the first of two days of the final hearing for Parents' dissolution proceeding.³ On March 4, the Dissolution Court issued an order denying Father's July 7, 2021, petition to modify his child support and spousal maintenance obligations. The Dissolution Court's order reads:

1. The Court finds that it has jurisdiction over the parties and the subject matter.
2. The Court takes judicial notice of all of the prior findings and orders in [the Dissolution Court].
3. The Court takes judicial notice of all prior findings and orders in [the Guardianship Court].

³ On April 25, 2022, the Dissolution Court held the third day of the final hearing, addressing additional motions Parents had filed. However, those motions do not impact this appeal.

4. On November 6, 2020, the Court entered provisional orders wherein [Father] was ordered to pay \$1,000.00 a month in [spousal] maintenance to [Mother.]
5. [Father] filed a motion to modify child support and maintenance on July 7, 2021.
6. On September 10, 2021, the parties entered into a[n] . . . agreement that became [the Settlement Conference Order, that] stated in paragraph #2[,] “The parties agree spousal maintenance will end at the time of the final dissolution decree in [Parents’] divorce proceeding.[”]
7. At the time of the [December 17, 2021,] hearing [on this matter], [Father] agreed to allow the issue of the modification of child support to pend until the final dissolution hearing and allow it to be addressed at that time.
8. *However, [Father] pursued the issue of Modification of the Maintenance order.*
9. *This [Dissolution] Court has no power or authority to modify the [Guardianship Court’s] Order[.]*
10. *The . . . Settlement Conference Order is determinative on the issue of spousal maintenance*
11. *[Parents] addressed the specific issue of spousal maintenance in the guardianship proceeding with the same Counsel present as those representing them in the dissolution proceedings. Therefore, the parties are collaterally estopped in the dissolution matter from re-litigating the issue of spousal maintenance.*

12. The [Dissolution] Court denies the request to modify maintenance.

Id. at 125-26 (emphasis added).

[11] On May 10, 2022, the Guardianship Court held a hearing on Mother's Motion to Modify Settlement Conference Order, during which Parents presented argument on Father's spousal maintenance obligation, as well as certain services that were afforded to S.S. At the conclusion of the hearing, the Guardianship Court denied Mother's Motion to Modify Settlement Conference Order, finding that there was no change in circumstances that warranted modification of the order. The court explained:

In those . . . negotiations [that took place during the Settlement Conference,] . . . [Father] in the end gave up his role as co-guardian, he gave up his week on, week off, [visitation] time with [S.S.] [H]e gave [up] attending in[-]person participation at meetings that pertain [to S.S.'s] care and services[.] [B]ut as good as any good negotiations, when one side is giving up something, the other side gives up something. The other side was willing [to give] up spousal maintenance. And[, Mother,] if . . . [by] saying[, okay[, I'll give up that money so that I can have this control[, your intention] was to then try to . . . go around[-]about to the [Dissolution Court] just to get that money through a different source, then you were sorely mistaken, because this is not a change in circumstances. All these things [pertaining to S.S.'s care and services] . . . were discussed. . . . [T]he terms of that [Settlement Conference] agreement were clear, each side was giving up something[.] [A]nd now you want to come in here and tell me that these terms need to be taken out so you really don't have to give up anything and you get it all[, and that's where [the] whole thing unravel[s] So the Motion to Modify is

denied. You are all expected to follow the terms of that [Settlement Conference O]rder[.]

Transcript, Volume 2 at 29-30.

- [12] On May 16, 2022, the Guardianship Court issued its written order denying Mother's Motion to Modify Settlement Conference Order.⁴ Mother now appeals the Guardianship Court's order denying her motion. Additional facts will be provided as necessary.

Discussion and Decision

I. Motion to Strike

- [13] As an initial matter, we address Mother's October 18, 2022, motion to strike all or portions of Father's appellee's brief and appendix, specifically, the dissolution decree issued by the Dissolution Court on July 20, 2022, and other pleadings filed in the dissolution proceeding. Mother claims that because the

⁴ On July 20, 2022, the Dissolution Court issued the final dissolution decree in Parents' divorce proceedings. Regarding the spousal-maintenance issue, the Dissolution Court denied Mother's request for ongoing spousal maintenance, finding, as it did in its March 4, 2022, order that it had "no power or authority" to modify the Settlement Conference Order that had been issued by the Guardianship Court; the Settlement Conference was "determinative on the issue of spousal maintenance"; spousal maintenance would end when the final dissolution decree was issued; and Parents were "collaterally estopped in the dissolution matter from re-litigating" the spousal-maintenance issue. Appendix of Appellee, Volume II at 89-90. Parents filed separate motions to correct error in the dissolution matter, which the Dissolution Court addressed in an order issued on November 28, 2022. For purposes of this appeal, we take judicial notice of the dissolution decree and the pleadings subsequently filed in the Dissolution Court as court records. *See* Ind. Evidence Rule 201(a)(2)(C), – (b)(5), –(d) (we may take judicial notice of the records of a court of this state, and judicial notice may be taken at any stage of the proceedings, including on appeal). However, the decree and pleadings do not impact our analysis of this case.

decree and pleadings in question pertain to Parents' dissolution proceeding and were issued by or filed in the Dissolution Court *after* the May 10, 2022, hearing that was held by the Guardianship Court, the decree and pleadings are not properly part of the record on appeal and should not be considered by this court. We find that the challenged decree and pleadings have no bearing on the dispositive issues before us and do not impact our analysis of this case. Therefore, we deny Mother's motion to strike by separate order issued contemporaneously with this decision.

II. Standard of Review

[14] A trial court is vested with discretion in making determinations as to the guardianship of an incapacitated person. *See* Ind. Code § 29-3-2-4(a); *In re Guardianship of Atkins*, 868 N.E.2d 878, 883 (Ind. Ct. App. 2007), *trans. denied*. Thus, findings and orders issued in guardianship proceedings are within the discretion of the trial court. *In re Adoption of J.L.J.*, 4 N.E.3d 1189, 1194 (Ind. Ct. App. 2014), *trans. denied*; *see also* Ind. Code § 29-3-2-4(a). This discretion extends to both its findings and its order. *Atkins*, 868 N.E.2d at 883. Accordingly, here, we apply the abuse-of-discretion standard to review the Guardianship Court's findings and order; an abuse of discretion occurs when the decision is "clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law." *J.L.J.*, 4 N.E.3d at 1194. We review any questions of law *de novo*, however, affording no deference to the court's legal conclusions. *Id.*

III. Guardianship Court Presiding Over Mother's Motion to Modify Settlement Conference Order

[15] Mother contends that the Guardianship Court committed reversible error when it presided over her Motion to Modify Settlement Conference Order after previously having presided over Parents' Settlement Conference. Mother argues that the "confidential and privileged communication learned by [the Guardianship Court judge] during the [Settlement Conference] should not have been relied on . . . and should not have been incorporated into the reasoning of [the Settlement Conference] Order as to the requested modification."

Appellant's Brief at 13. Mother maintains that "[e]ven though [Parents] had agreed [to the Guardianship Court judge presiding over the Settlement Conference, the judge] should have declined to hear the modification[.]" *Id.* According to Mother, the Alternative Dispute Resolution rules "conflict[]" the Guardianship Court judge "from hearing future matters for this case and that conflict cannot be waived by the agreement of [Parents]." *Id.*

[16] We note, however, Mother did not object to the Guardianship Court presiding over her motion to modify – after having previously presided over Parents' Settlement Conference. Mother's failure to lodge a specific objection at the hearing the Guardianship Court held on her motion has waived Mother's claim of error for our review. *See, e.g., Trout v. Trout*, 638 N.E.2d 1306, 1307 (Ind. Ct. App. 1994) ("A timely objection is a prerequisite to appellate review. An appellant cannot sit idly by without objecting, await the outcome of trial, and thereafter raise an issue for the first time on appeal.") (internal quotation marks

and citation omitted), *trans. denied*. Thus, Mother may prevail only upon showing fundamental error. *See David v. State*, 669 N.E.2d 390, 392 (Ind. 1996) (When a court on appeal “finds the error to be fundamental, such error need not be preserved by a contemporaneous objection.”). We will consider the fundamental-error exception despite Mother’s failure to raise it.

Fundamental error is error which is a blatant violation of our concepts of fundamental fairness and in which the harm or threat of harm is substantial and apparent. It is error which is so likely to have infected the verdict or judgment that confidence in the correctness of the trial result has been undermined.

The mere fact that error occurred and that it was prejudicial will not satisfy the fundamental error rule. Fundamental error, therefore, requires the appellant to show greater prejudice than ordinary reversible error because no objection has been made.

Werner v. Werner, 946 N.E.2d 1233, 1246 (Ind. Ct. App. 2011) (internal citations and quotation marks omitted), *trans. denied*. We have, on occasion, applied the fundamental-error exception in civil cases, but only where a substantial right is concerned. *See Johnson v. Wait*, 947 N.E.2d 951, 959 (Ind. Ct. App. 2011) (“We have applied the fundamental error doctrine only in limited situations in civil cases.” (citing *S.M. v. Elkhart Cnty. Off. of Fam. & Child.*, 706 N.E.2d 596, 599 n.3 (Ind. Ct. App. 1999)), *trans. denied*).

[17] Here, on the record before us, the Guardianship Court presiding over Mother’s Motion to Modify Settlement Conference Order after having previously

presided over Parents' Settlement Conference does not constitute error, let alone fundamental error. Accordingly, we find no merit in Mother's claim.

IV. Judicial Notice

[18] Mother also takes issue with the Guardianship Court taking judicial notice of Parents' dissolution proceeding. She contends that it was "improper" for the Guardianship Court to "take judicial notice of individual pleadings" in the dissolution proceeding and "whether those pleadings have been amended." Appellant's Br. at 20.

[19] We review the trial court's decision to take judicial notice of information for an abuse of discretion. *Horton v. State*, 51 N.E.3d 1154, 1157 (Ind. 2016). The conditions under which a trial court can take judicial notice is governed by Indiana Evidence Rule 201 which states, in relevant part:

(b) Kinds of Laws That May Be Judicially Noticed. A court may judicially notice a law, which includes:

* * *

(5) records of a court of this state;

(c) Taking Notice. The court:

(1) may take judicial notice on its own;

(d) Timing. The court may take judicial notice at any stage of the proceeding.

(Emphasis in original).

[20] Mother did not object to the Guardianship Court taking judicial notice of the pleadings filed in Parents’ dissolution proceeding. As such, she has waived this issue for our review. *See, e.g., Trout*, 638 N.E.2d at 1307-08. However, even if she had not waived the issue, her claim is without merit.

[21] “For years, [Evidence] Rule 201 did not permit a trial court to take judicial notice of court records, even if they were its own records in another case previously before the court on a related subject with related parties.” *Horton*, 51 N.E.3d at 1160 (internal quotation marks and citation omitted). However, our supreme court has since amended Indiana Evidence Rule 201 to permit courts to take judicial notice of the records of a court of this state. *Id.*

[22] At the hearing held on Mother’s Motion to Modify Settlement Conference Order, the Guardianship Court informed Parents that it was

[t]ak[ing] judicial notice of things that are taking place in the dissolution action[,] . . . regarding recent things that have taken place there since the . . . Settlement Conference which I thought might help inform me as to where . . . [we are] going down this road in the guardianship proceedings.

Tr., Vol. 2 at 5. And the Guardianship Court did not err in doing so. *See, e.g., In re D.K.*, 968 N.E.2d 792, 796 (Ind. Ct. App. 2012) (upholding the trial court’s judicial notice of the records of a related child in need of services proceeding at the outset of a hearing to terminate parental rights).

V. Guardianship Court's Authority to Decide the Spousal Maintenance Issue

[23] Next, Mother contends the Guardianship Court lacked the authority to decide the spousal-maintenance issue. Specifically, Mother argues the Guardianship Court “is not a court of competent jurisdiction to render a decision regarding spousal maintenance” and the Dissolution Court is the only court with the “statutory jurisdiction to consider and order spousal maintenance.” Appellant’s Br. at 13, 14. Thus, according to Mother, the “rogue term” – that is, the agreement that Father’s spousal-maintenance obligation would end when the final dissolution decree was issued – “should have been deleted from the [Settlement Conference] Order.” *Id.* at 14. We cannot agree.

[24] The Guardianship Court and the Dissolution Court, both Allen Superior Courts, are courts of general jurisdiction, and “[a]ll standard superior courts have . . . original and concurrent jurisdiction in all civil cases and in all criminal cases[.]” Ind. Code § 33-29-1-1.5(1). Our supreme court has held that “in courts of general jurisdiction, an action never lies against the judge because the judge has jurisdiction of all causes.” *Sims v. Beamer*, 757 N.E.2d 1021, 1025 (Ind. Ct. App. 2001) (citing *Cato v. Mayes*, 270 Ind. 653, 656, 388 N.E.2d 530, 532 (Ind. 1979)). Also, Parents agreed the Guardianship Court judge would preside over the Settlement Conference. And, the judge subsequently entered the Settlement Conference Order that included the provision to which Parents had agreed, that is, the termination of Father’s spousal-maintenance obligation.

Therefore, we cannot conclude that the Guardianship Court judge lacked the authority to decide the spousal-maintenance issue.

VI. Parents Bound By Guardianship Court’s Settlement Conference Order

- [25] Next, Mother argues that the Settlement Conference Order “is not a contract, but rather . . . is an [o]rder which can be modified, or vacated completely, by the Guardianship Court” because the Settlement Conference Order “was only ever filed in the Guardianship case [and not the dissolution proceeding], [and the Order] includes an ancillary term [regarding spousal maintenance] not enforceable under the jurisdiction of the Guardianship [Court.]” Appellant’s Br. at 20. We disagree.
- [26] Settlement agreements are contractual in nature and binding if approved by the trial court. *Pherson v. Lund*, 997 N.E.2d 367, 369 (Ind. Ct. App. 2013). The court that enters a settlement agreement is in the best position to resolve questions of *interpretation and enforcement* of that agreement and retains this authority. *See id.* This task is an exercise in the construction of the terms of a written contract, which is a pure question of law. *Id.* Our standard of review is therefore de novo. *Id.* When interpreting a settlement agreement, we apply the general rules of contract construction. *Id.* Unless the terms of the contract are ambiguous, they will be given their plain and ordinary meaning. *Id.*
- [27] Here, Parents agreed to participate in the Settlement Conference, during which Parents were represented by the same respective counsel that represented

Parents in the dissolution proceeding. After hours of negotiation, Parents agreed to the provisions that were set forth in the Settlement Conference Order, including the provision regarding spousal maintenance, which clearly stated Parents “agree spousal maintenance will end at the time of the final dissolution decree in [Parents’] divorce proceeding.” App. of Appellant, Vol. II at 44. The Settlement Conference Order was signed by Mother, Father, their respective counsel, and the Guardianship Court judge. Thus, Parents are bound by the Order, and the Order is not subject to modification by the Guardianship Court.⁵

[28] Because we decide this issue on grounds that Parents are bound by the Settlement Conference Order, we need not address Mother’s sufficiency-of-the-evidence issue but do so for instructional purposes. Mother contends that the Guardianship Court erred in denying her Motion to Modify Settlement Conference Order, finding that “there [wa]s no change in circumstances that would justify modifying the agreement[.]” Appealed Order at 1. Mother maintains that she presented sufficient evidence to support a modification and argues that the Guardianship Court “did not give appropriate weight” to that evidence. Appellant’s Br. at 28. However, Mother’s argument misses the mark.

[29] When parties to a dissolution agree in writing to the disposition of property and the trial court subsequently approves and adopts that agreement as a decree of

⁵ This is not meant to foreclose a circumstance where Parents might agree to file a joint motion, requesting modification of the Settlement Conference Order.

the court, the trial court may not subsequently modify the terms of the agreement “except as the agreement prescribes or the parties subsequently consent.” Ind. Code § 31-15-2-17(c).⁶ Here, Parents assented to enter into settlement negotiations in the Guardianship Court (not the Dissolution Court), and, after hours of negotiations, agreed to certain provisions regarding care and services for S.S., parenting time, and the termination of Father’s spousal-maintenance obligation but did not include a provision regarding subsequent modification of the agreement. Parents’ agreements were entered in the Guardianship Court’s Settlement Conference Order and Parents, their respective counsel, and the Guardianship Court judge all signed the Order.

[30] We already have determined Parents are bound by the Settlement Conference Order, and the Order is not subject to modification by the Guardianship Court. Mother’s sufficiency-of-the-evidence argument is inapposite. The Guardianship Court did not abuse its discretion in denying Mother’s Motion to Modify Settlement Conference Order.

Conclusion

[31] The Guardianship Court did not commit reversible error by presiding over Mother’s Motion to Modify Settlement Conference Order after previously

⁶ However, the trial court retains jurisdiction to *interpret and enforce* the terms of its property settlement agreements. *See, e.g., Robinson v. Robinson*, 858 N.E.2d 203, 206 (Ind. Ct. App. 2006) (“Courts of this State have long had power, both inherent and statutory, to entertain actions to determine whether a judgment has been carried out and satisfied.” (internal quotations and citation excluded)).

having presided over Parents' Settlement Conference, the Guardianship Court did not err by taking judicial notice of Parents' dissolution proceeding, the Guardianship Court possessed the requisite authority to decide the spousal-maintenance issue, Parents are bound by the Settlement Conference Order, and the Order is not subject to modification. Accordingly, the judgment of the Guardianship Court is affirmed.

[32] Affirmed.

Mathias, J., and Foley, J., concur.