



---

ATTORNEY FOR APPELLANT

Eric D. Orr  
Berne, Indiana

ATTORNEY FOR APPELLEE

Rex L. Patterson  
Patterson Law LLC  
Fort Wayne, Indiana

---

IN THE  
COURT OF APPEALS OF INDIANA

---

Eric S. Rambo,  
*Appellant-Petitioner,*

v.

Liane K. Rambo,  
*Appellee-Respondent*

April 25, 2022

Court of Appeals Case No.  
21A-DC-2472

Appeal from the  
Adams Circuit Court

The Honorable  
Chad E. Kukelhan, Judge

Trial Court Cause No.  
01C01-2108-DC-42

**Vaidik, Judge.**

## Case Summary

- [1] Indiana Code section 31-15-4-8 authorizes a trial court in a dissolution-of-marriage action to issue a provisional order governing the affairs of the parties while the action is pending. The provisional order can include, among other things, “an order for possession of property.” The issue in this appeal is whether

this provision allows a trial court to order the sale of property. We hold it does not.

## Facts and Procedural History

- [2] Eric S. Rambo (“Husband”) and Liane K. Rambo (“Wife”) married in 2012. By 2021, they had two young children and were living in a house in Decatur. Husband had quit his job so that he could work from home as a mechanic, and Wife was the primary earner. At some point, concerns about mold prompted them to move out of the house and in with Wife’s parents. Gabe Bowser of Enviro Decon collected samples at the house and reported “high levels” of mold that could be “detrimental to the health of occupants.” Respondent’s Ex. E. Nonetheless, in July 2021, Husband left Wife and returned to live in the house.
- [3] In August 2021, Husband petitioned for dissolution of the marriage and moved for provisional orders regarding child support, child custody, possession of certain property, payment of debt, spousal maintenance, and attorney’s fees. He asked for “temporary, exclusive possession” of the house, a tractor, and a camper. Appellant’s App. Vol. II p. 14. The next month, Wife filed a cross-petition for dissolution and her own motion for provisional orders. In her motion, Wife asked the court to order that the house “be listed for sale ‘as-is’ due to the mold infestation.” *Id.* at 24.

- [4] At the provisional hearing, Husband claimed he “spent his entire 401K redoing their shop so that he could work from home” and had “not had any detriment from the alleged mold” while living in the house. Tr. pp. 9, 11. Bowser, however, testified the mold level in the house was the second highest he had ever seen and that “it’s not recommended to stay in the house.” *Id.* at 34. Wife also suggested that selling the house would help pay for attorney’s fees, a mediator, and a guardian ad litem.
- [5] After the hearing, the trial court issued a provisional order that, among other things, requires the parties to auction the house in ninety days and to use the ninety days “to rehabilitate the property to maximize its value to marital estate.” Appellant’s App. Vol. II p. 9. The court also ordered the parties to auction the tractor and the camper.
- [6] Husband now brings this interlocutory appeal as a matter of right under Indiana Appellate Rule 14(A)(4). The trial court has stayed the auction requirements pending appeal.

## Discussion and Decision

- [7] Husband contends the provisional-order statute does not allow a court to order the sale of property. No Indiana appellate court has decided this issue. Statutory interpretation is a pure question of law, so our review is de novo. *Miller v. Patel*, 174 N.E.3d 1061, 1064 (Ind. 2021).

[8] Provisional orders in dissolution-of-marriage actions are governed by Indiana Code chapter 31-15-4. Section 31-15-4-1(a) provides that either party to such an action “may file a motion for any of the following: (1) Temporary maintenance. (2) Temporary support or custody of a child of the marriage entitled to support. **(3) Possession of property.** (4) Counseling. (5) A protective order under IC 34-26-5.” (Emphasis added.) In turn, Section 31-15-4-8 provides:

(a) The court may issue an order for temporary maintenance or support in such amounts and on such terms that are just and proper. However, the court shall require that the support payments be made through the clerk of the circuit court as trustee for remittance to the person entitled to receive benefits, unless the court has reasonable grounds for providing or approving another method of payment.

(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.

(Emphasis added.) Husband argues that the provision authorizing “an order for possession of property” does not allow an order for sale of property. Wife responds that an order requiring the sale of property is, in effect, “an order for

possession of property”—an order that “neither party should possess it.”

Appellee’s Br. p. 12. We agree with Husband.

[9] In the context of a pending marriage-dissolution action, the plain meaning of the phrase “an order for possession of property” is an order declaring which spouse will possess particular property during the pendency of the action. The idea is that the parties shared the property when they were together, but they are now separated and the court must decide which of the two will possess the property **until the dissolution is finalized**.

[10] This reading of the statute is consistent with the nature of a provisional order. Such an order is “temporary,” in place during the pendency of the dissolution proceedings and terminating when the final dissolution decree is entered. *Mosley v. Mosley*, 906 N.E.2d 928, 930 (Ind. Ct. App. 2009). “The issuance of a provisional order is without prejudice to the rights of the parties or the child as adjudicated at the final hearing in the proceeding.” Ind. Code § 31-15-4-13. “The trial court is making a preliminary determination on the basis of information that is yet to be fully developed.” *Mosley*, 906 N.E.2d at 930. The sale of property is not a “temporary” action and cannot be changed as relevant information is developed.

[11] Moreover, when the legislature wants to authorize an order for sale of marital property, it says so. Indiana Code section 31-15-7-4, which governs the division of marital property in a dissolution action, provides, in part:

(b) The court shall divide the property in a just and reasonable manner by:

(1) division of the property in kind;

(2) setting the property or parts of the property over to one (1) of the spouses and requiring either spouse to pay an amount, either in gross or in installments, that is just and proper;

**(3) ordering the sale of the property under such conditions as the court prescribes and dividing the proceeds of the sale; or**

(4) ordering the distribution of benefits described in IC 31-9-2-98(b)(2) or IC 31-9-2-98(b)(3) that are payable after the dissolution of marriage, by setting aside to either of the parties a percentage of those payments either by assignment or in kind at the time of receipt.

(Emphasis added.) 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.”

[12] Wife identifies several reasons why an order for the sale of property could be a good idea at the provisional stage. The property might be decreasing in value. The parties might need to pay attorneys, a mediator, a guardian ad litem, or other professionals. Or the property might be at imminent risk of foreclosure. *See St. Angelo v. St. Angelo*, 496 N.Y.S.2d 633 (N.Y. Sup. Ct. 1985). But those

are arguments for the legislature. We must apply the provisional-order statute as it is currently written, and that statute allows only an order for the possession of property, not the sale.<sup>1</sup> We therefore reverse the order for the sale of the house, the tractor, and the camper and remand this matter to the trial court for the entry of a revised provisional order.

[13] Reversed and remanded.

Najam, J., and Weissmann, J., concur.

---

<sup>1</sup> Our holding is limited to situations in which one or both of the parties to a dissolution action object to the sale of property. Parties are free to enter an agreed provisional order for the sale of property.