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IN THE
COURT OF APPEALS OF INDIANA

JUSTIN R. LEED,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 50A03-1011-DR-593
	)	
MELISSA A. LEED,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARSHALL SUPERIOR COURT
The Honorable Robert O. Bowen, Judge
Cause No. 50D01-1001-DR-6

June 30, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Petitioner Justin Leed ("Husband") appeals from the trial court's order modifying the Marriage Settlement Agreement ("MSA") he entered into upon the dissolution of his marriage with Appellee-Respondent Melissa A. Leed ("Mother"). We affirm.

FACTS AND PROCEDURAL HISTORY

Husband and Wife married on June 18, 2004, and on January 2, 2010, met with an attorney to discuss dissolving their marriage. On January 20, 2010, Husband told the attorney, who he had by this time retained, that he and Wife had reached a settlement agreement regarding the dissolution of their marriage. On January 22, 2010, Husband petitioned for dissolution of the marriage.

On February 12, 2010, Husband and Wife met in Husband's attorney's office to discuss a draft of the settlement agreement. On March 4, 2010, a final written MSA was signed by Husband and Wife. The MSA and proposed dissolution decree were filed with the trial court on March 24, 2010, and the trial court accepted and approved them, issuing a dissolution decree the next day. The MSA provided, in part, as follows:

> 5. CASH SETTLEMENT. The Wife is presently involved in a personal injury accident case and anticipates receiving a recovery either by settlement or trial. Wife agrees to pay Husband the sum of Thirty-five Thousand Dollars ($35,000.00) from the proceeds of said personal injury case to be paid within thirty (30) days from the date that she receives the proceeds.

Appellant's App. p. 15.

On April 13, 2010, Wife filed a notice of intent to rescind the MSA, and, on April 27, 2010, moved to set aside the MSA on the basis that its terms were unconscionable,

that some terms were changed prior to her signing the MSA, and that significant changes in her circumstances warranted modification of the MSA.

On October 5, 2010, the trial court held a hearing on Wife's motion to set aside the MSA. Wife testified that she owed approximately $30,000.00 in medical bills as a result of the accident which gave rise to her lawsuit and that Husband had told her that he had accrued $35,000.00 in credit card bills as a result of paying her medical bills, when, in fact, he had not paid any of her medical bills. Wife testified that at the time she signed the MSA it was her understanding that the $35,000.00 payment to Husband was intended to retire debt he accrued paying her medical bills. Husband testified that he had never told Wife that he had paid her bills and that the payment was intended to insure that neither party emerged from the dissolution with debt.

On October 14, 2010, the trial court issued an order in which it modified but did not set aside the MSA. The trial court's order provides, in relevant part, as follows:

> The Court now **FINDS** that:
>
> 1. The parties entered a Marriage Settlement Agreement which the Court approved on March 25, 2010. That Agreement was entered into knowingly, voluntarily, and after full disclosure of all assets, debts, and obligations.
> 2. The Agreement provides that the Wife is to pay Husband Thirty-Five Thousand ($35,000) from the proceeds of her pending personal injury accident claim. That payment is contingent upon her being compensated for her claim and is not in the form of a judgment. The Wife understood that the payment was to reimburse the Husband for medical bills which he paid on her behalf. The Husband claims that sum was to allow him to pay the mortgage and $25,000 in credit card debt and that their intent was that each party walk away from the marriage without debt.
> 3. The Wife's medical bills totaled $33,075.25 of which $2,267.44 have been paid leaving a balance due of $30,807.81.

4. It is impossible to know if the parties' intent for each to be debt free can be accomplished without knowing the amount of any settlement or award on the Wife's personal injury claim. In addition, if her award is $35,000 or less and payment was made to the Husband without consideration of the medical bills, then the Husband would be debt free while the Wife would be responsible for the medical bills.
5. Consequently, the only rational interpretation is that the $35,000 be payable to the Husband for payment of the medical bills first and the balance retained by him for payment towards his other debts.

IT IS THEREFORE ORDERED that:

1. The Marriage Settlement Agreement is not set aside. However, the $35,000 payment by the Wife to the Husband shall be held in trust by the Wife's attorney and paid in the following priority:
    - Reimbursement to the Husband for payment of any medical bills of the Wife resulting from her accident and which he paid;
    - Payment of any outstanding medical bills of the Wife resulting from her accident but not to exceed $30,807.81; and
    - Balance, if any, to the Husband.
2. The Wife shall make all efforts to compromise any medical bills as part of the personal injury claim.

Appellant's App. pp. 22-23. Husband appeals, contending that the trial court's modification of the MSA constitutes an abuse of discretion.

DISCUSSION AND DECISION

Whether the Trial Court Abused its Discretion by Modifying the MSA

Where, as happened here, the trial court *sua sponte* enters specific findings of fact and conclusions, we review its findings and conclusions to determine whether the evidence supports the findings, and whether the findings support the judgment. *Fowler v. Perry*, 830 N.E.2d 97, 102 (Ind. Ct. App. 2005). We will set aside the trial court's findings and conclusions only if they are clearly erroneous. *Id*. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake was made. *Id*. We neither reweigh the evidence nor assess the witnesses' credibility, and consider only the evidence most favorable to the judgment. *Id*. Further, "findings made *sua sponte* control only … the issues they cover and a general judgment will control as to the issues upon which there are no findings. A general judgment entered with findings will be affirmed if it can be sustained on any legal theory supported by the evidence." *Id*.

Indiana Code section 31-15-2-17 (2009) provides, in relevant part, as follows:

> (a) To promote the amicable settlements of disputes that have arisen or may arise between the parties to a marriage attendant upon the dissolution of their marriage, the parties may agree in writing to provisions for:
>
> …
>
> (2) the disposition of any property owned by either or both of the parties[.]
>
> …
>
> (b) In an action for dissolution of marriage:
>
> (1) the terms of the agreement, if approved by the court, shall be incorporated and merged into the decree and the parties shall be ordered to perform the terms[.]
>
> …
>
> (c) the disposition of property settled by an agreement described in subsection (a) and incorporated and merged into the decree is not subject to subsequent modification by the court, except as the agreement prescribes or the parties subsequently consent.

"A property settlement agreement incorporated into a final dissolution decree and order may not be modified unless the agreement so provides or the parties subsequently consent." *Myers v. Myers*, 560 N.E.2d 39, 42 (Ind. 1990). "A property settlement that is incorporated into a final divorce decree is a binding contract, and the dissolution court may not modify that settlement absent fraud, duress, or undue influence." *Rothschild v. Devos*, 757 N.E.2d 219, 223 (Ind. Ct. App. 2001); *but see* Ind. Code § 31-15-7-9.1 (2009) ("[O]rders concerning property disposition … may not be revoked or modified, except in case of fraud."). "A strong policy favors the finality of marital property divisions, whether the court approves the terms of a settlement agreement reached by the parties or the court mandates the division of the property among the parties." *Poppe v. Jabaay*, 804 N.E.2d 789, 793 (Ind. Ct. App. 2004) (citing *Dusenberry v. Dusenberry*, 625 N.E.2d 458, 461 (Ind. Ct. App. 1993)), *trans denied*. "One purpose of this policy is to eliminate vexatious litigation which often accompanies the dissolution of a marriage." *Id*. (citing *Lankenau v. Lankenau*, 174 Ind. App. 45, 365 N.E.2d 1241, 1244 (1977)).

Here, the Husband did not agree to a modification of the MSA, and the MSA specifically prohibits modification unless both parties agree in writing. We conclude, however, that the trial court did not modify the MSA, but, rather, interpreted it in such a way that its apparent intent would be given effect. Even if one accepts Husband's position that the intent of the MSA was to ensure that neither party walked away from the marriage with debt, a $35,000 payment to him with no strings attached does nothing to further that intent. While any such payment could certainly retire Husband's credit card debt, it would leave Wife $35,000 further in debt *and* still responsible for her

approximately $31,000 in medical bills. We would also note that the amount of the payment is very close to the $33,075.25 in medical bills accumulated by Wife, which further indicates that the payment was intended by the parties to retire her medical debts. We agree with the trial court's conclusion that the only rational interpretation of the MSA is that the $35,000 should be used first to retire Wife's medical debts, whether those already paid by Husband or those yet to be paid, with any remainder going to Husband. Under the circumstances of this case, we cannot say the trial court erred in its interpretation of the MSA.

We affirm the judgment of the trial court.

BAKER, J., concurs.

MAY, J., dissents with opinion.

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MAY, Judge, dissenting

The majority acknowledges the agreement before us could not be modified by the trial court, yet it purports to find the changes the trial court made amounted to a permissible "interpretation" of the agreement. As this agreement need not, and therefore should not, be "interpreted" by the trial court or this court, I must respectfully dissent.

I note the settlement agreement itself is silent on the "apparent intent," *slip op*. at 6, that the majority attributes to both parties to support the "rational interpretation," *id*., it reaches. Specifically, the agreement provides only that Wife will pay Husband $35,000 when she receives the anticipated proceeds from a personal injury case. The majority directs us to nothing in the agreement indicating how that money was to be used -- nor could it, because no provision of the agreement explains its purpose. What the agreement *does* say is that it settles "all their property rights and all other issues" that might arise,

(App. at 9), and "contains all of the representations and covenants made between the parties." (*Id*. at 11.)

Settlement agreements become binding contracts when incorporated into a dissolution decree, and we interpret them according to the general rules for contract construction. *Bailey v. Mann*, 895 N.E.2d 1215, 1217 (Ind. 2008). Unless the terms of an agreement are ambiguous, they are given their plain and ordinary meaning. *Id.* A court cannot look beyond the clearly expressed provisions in a contract to hold, based purely on speculation, that the clear provisions were drafted for a covert purpose. *DeBoer v. DeBoer*, 669 N.E.2d 415, 421 (Ind. Ct. App. 1996), *trans. denied*. Neither can a court admit extrinsic evidence to assist in its interpretation of an agreement; unless an ambiguity appears on the face of the document; extrinsic evidence is not admissible to create an ambiguity. *Id*. "The consequence of drafting the document to appear on its face clear is that it is clear." *Id*.

In *Bailey*, the settlement agreement provided wife would take as a separate asset a "Pontiac G-6 (subject to the lease thereon)." 895 N.E.2d at 1216. The husband alleged wife's failure to remove his name from the lease violated the agreement. The trial court ordered the wife to remove the husband's name from the lease to "effectuate the 'spirit' of the Property Settlement Agreement." *Id*. at 1217.

Our Indiana Supreme Court reversed that part of the trial court's order. It noted the agreement "requires the wife to make payments on the lease, but does not require her to refinance or remove the husband's name from the lease. . . . the husband was free to negotiate a provision explicitly requiring the wife to remove his name from the lease."

Id. at 1218. It accordingly did not find a requirement to remove the husband's name to be "an inevitable inference from an award of the vehicle to the wife." *Id*.

Nor, in the case before us, would I hold the agreement's unambiguous provision that Wife will give Husband $35,000 leads to the "inevitable inference," *id.*, that the personal injury proceeds must first be used for the medical bills that arose from that accident. The agreement says nothing about why Wife was to give that money to Husband and, as in *Bailey*, Wife could have negotiated a requirement that the personal injury proceeds first be used to pay for the medical bills that arose from that accident. *See id.* Accordingly, I dissent from the majority's decision to affirm the trial court's modification of this unambiguous provision of the settlement agreement.