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IN THE
COURT OF APPEALS OF INDIANA

JAMES R. LOCKHART, JR.,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 29A02-1103-DR-208
	)	
LISA (LOCKHART) GUYER,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
The Honorable William P. Greenaway, Magistrate
Cause No. 29D02-0605-DR-479

December 20, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

The marriage between James R. Lockhart, Jr. ("Husband") and Lisa (Lockhart) Guyer ("Wife") was dissolved on November 23, 1998. Husband appeals the trial court's post-dissolution order ("the Order"), which was issued February 3, 2011, raising the following consolidated and restated issues:

I. Whether the trial court erred when it granted Wife's petition for accounting and enforcement of the parties' decree of dissolution, and ordered Husband to make an accounting and to pay Wife 45% of the net proceeds of the sale of certain development property described in the parties' negotiated, Final Settlement Agreement ("Settlement Agreement");

II. Whether the trial court erred in failing to include, in the Order, the parties' stipulation regarding Husband's overpayment of child support; and

III. Whether the trial court erred in awarding Wife attorney fees in the amount of $20,000.00.

We affirm in part, reverse in part, and remand with instructions.

FACTS AND PROCEDURAL HISTORY

Husband and Wife were married on April 9, 1983 and are the parents of five children. During their marriage, the parties purchased numerous acres of property ("Development Property") located in an undeveloped subdivision called Nestledown Farms in Fortville, Indiana. The purchase was financed by a $475,000.00 loan from Union Federal Savings Bank ("Union Federal"); the indebtedness of the loan was reflected in a note dated February 9, 1996 ("Note"), which had a maturity date of February 1, 2001. Two Union Federal mortgages secured the Note—one on the Development Property itself and the second on the marital residence ("Marital Residence") located on Pine Valley Court in Fishers, Indiana. In

1994, in connection with the purchase of the Marital Residence, Husband and Wife had entered into a mortgage with Kemper Mortgage Company ("Kemper"); therefore, the Union Federal mortgage against the Marital Residence was subordinate to the Kemper mortgage. *Appellant's App.* at 50-51.

The trial court dissolved the marriage pursuant to a "Decree of Dissolution of Marriage" ("Decree"), dated November 23, 1998, which approved and incorporated by reference therein the parties' Settlement Agreement. *Id.* at 27-42. The Settlement Agreement ordered Husband to pay set amounts of weekly child support, required him to maintain health insurance coverage for the children, and provided the respective amounts that Husband and Wife would have to pay for "non-covered/deductible health, medical, dental, optical, ophthalmological and orthodontia expenses." *Id.* at 37.

Regarding property rights, the Settlement Agreement granted Wife all right title and interest in the Marital Residence, and ordered her to assume and pay the remaining mortgage on the Marital Residence (approximately $170,000.00). Additionally, the Settlement Agreement memorialized Husband's transfer by quitclaim deed of his interest in the Marital Residence to Wife; such quitclaim deed, dated September 10, 1998, specifically stated that it was "given pursuant to a certain Settlement Agreement from the Hamilton Superior Court…." *Id.* at 30; *Pet'r's Ex.* 7. Pursuant to the Settlement Agreement, the parties were to continue to co-own the Development Property until the *earlier* of the date the property sold

or two years from the date of dissolution,[1] at which time the parties were to obtain an appraisal and, after subtracting from that the outstanding mortgage, Husband was to pay Wife 45% of the net equity in a lump sum. *Id.* at 33.

On March 27, 2009, Husband filed a petition for modification of child support ("Petition for Modification"). About three months later, Wife filed a petition for accounting and enforcement of the Decree ("Petition for Accounting") pertaining to the Development Property, and a petition to determine the parties' respective shares of the children's uninsured healthcare and other expenses ("Petition to Set Respective Shares"). *Id.* at 12, 46-54. Husband filed a motion to dismiss Wife's Petition for Accounting and requested attorney fees, and Wife filed a motion for summary judgment. On May 13, 2010, the trial court denied both Husband's motion to dismiss and Wife's motion for summary judgment. *Id.* at 119.

A hearing was held on Husband's Petition for Modification, and in an order dated October 29, 2010 ("Modification Order"), the trial court determined that Husband had overpaid child support in the amount of $14,762.23. *Id.* at 123. The Modification Order also acknowledged,

> By agreement of the parties, this overage and any further overage that has accrued shall be applied to the amount due to [Wife], if any, as determined by the disposition of the pending [Petition to Set Respective Shares]. If the disposition of said petition shows that [Husband] owes less than the overage, the remaining overage shall be due at the time of said dispositional order, and

[1] At the time of the parties' dissolution of marriage, the Development Property consisted of "three unsold lots and 19.9 acres of development property." *Appellant's App.* at 32.

> shall become a judgment against [Wife] and in favor of [Husband], and shall accrue interest at a rate of five percent (5%) thereafter.

Id.

On January 13, 2011, the trial court held a hearing on Wife's Petition for Accounting. During the hearing, Wife testified that she had married Dale Guyer ("Dale") in July 2000. *Tr*. at 10, 13. She also testified that, when the Development Property did not sell within two years after the date of the dissolution, she contacted Husband to ask him about the status of the sale of the Development Property, and Husband advised her "[t]hat there was just difficulty selling the lots." *Id*. at 31. Husband also said "he didn't understand why [Wife] would want to have appraisals." *Id*. at 31-32.

Thereafter, Wife explained to Husband that she and Dale were attempting to get a business loan. To do so, Wife needed to refinance the Marital Residence, which she could not do until the Union Federal mortgage against the Marital Residence, which had been added to secure the Note for the purchase of the Development Property, was removed. Husband suggested that Wife should execute a quitclaim deed and that he would refinance the Development Property alone.

Husband testified that he told Wife:

> This thing is such a, a volatile balance in terms of the debt, and the value, that you could end up writing me a check for your 45%, or I might write you a check for a little bit more than that. So, you know what, you can either stay in it, as a partner, or I'll give it to you and you can take it, or I'll take it over. So, pick one."

Tr. at 96-97. In order to have the subordinate Union Federal mortgage removed from the Marital Residence, the parties agreed that Husband would have his attorney prepare a quitclaim deed for Wife's signature.

On April 16, 2001, Wife gave Husband a quitclaim deed to the Development Property ("Quitclaim Deed"). *Appellant's App.* at 156. The Quitclaim Deed provided as follows:

> THIS INDENTURE WITNESSETH, Lisa L. Guyer, who took title as Lisa L. Lockhart, (Grantor) QUITCLAIM(S) to J.R. Lockhart, Jr. (Grantee) . . . of Hamilton County, in the State of Indiana for the sum Ten and no/100 Dollars ($10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the following described real estate in Hamilton County, State of Indiana, to-wit:
> . . . .

Id. The Quitclaim Deed made no reference to the Settlement Agreement and made no mention that Wife was releasing any rights under the Decree or Settlement Agreement. Also on April 16, Husband entered into two mortgages with Irwin Union Bank and Trust Co., both of which were to secure a $500,000.00 note that had a maturity date of April 15, 2002. The first mortgage was on the Development Property and stated, "The lien of this Mortgage shall not exceed at any one time $750,000.00." *Resp't's Ex.* B at 1. The second mortgage was on Husband's personal residence and stated: "The lien of this Mortgage shall not exceed at any one time $100,000.00." *Resp't's Ex.* C at 1. Approximately one year after executing the Quitclaim Deed, Wife refinanced the Marital Residence to borrow additional money to invest in Dale's business. *Tr*. at 81.

Wife testified that, after she signed the Quitclaim Deed, she asked Husband when he was going to have the Development Property appraised. Husband "just acted as though he

wasn't going to do anything about it [the appraisal]." *Id*. at 39. Wife contacted an attorney about enforcing her rights, and after speaking with Husband, the attorney told Wife that Husband thought the Quitclaim Deed had extinguished Wife's rights to the Development Property. *Id*. at 40. The Development Property was sold in January 2008 for approximately $1,500,000.00.

Following the hearing on the Petition for Accounting, the trial court found that the Quitclaim Deed did not extinguish Wife's rights and interests in the Development Property, and ordered:

> 2. Within thirty (30) days of this [O]rder, [Husband] shall fully account to the [Wife] for the sale of the investment property and pay her 45% of the net proceeds therefrom.
>
> 3. [Husband] shall pay $20,000.00 of attorney fees to [Wife] within thirty (30) days or the same shall be reduced to judgment upon proper motion.

Appellant's App. at 19-20. Husband now appeals.

DISCUSSION AND DECISION

I. Development Property

Husband contends that the trial court erred when it granted Wife's Petition for Accounting and ordered Husband to pay Wife 45% of the net proceeds following the sale of the Development Property. Specifically, he contends that this case involves the legal effect of a quitclaim deed, and here, the trial court erred in determining that the Quitclaim Deed did not extinguish Wife's interest in the Development Property. He asserts that under the rules of construction, the language of a quitclaim deed, if unambiguous, determines the parties' intent such that parole or extrinsic evidence is inadmissible to expand, vary, or explain the

instrument unless there has been a showing of fraud, mistake, ambiguity, illegality, duress, or undue influence. *Appellant's Br.* at 11 (citing *Clark v. CSX Transp., Inc.*, 737 N.E.2d 752, 757 (Ind. Ct. App. 2000), *trans. denied*). Husband argues that if, such as here, there is no ambiguity in a deed, the intentions of the parties must be determined from the language of the instrument alone, *i.e.*, from the "four corners." *Id.*

While we agree with Husband's assessment as to the rules of construction for a quitclaim deed, we disagree with Husband's premise that the essence of this case is the legal effect of Wife entering into the Quitclaim Deed. Instead, we find this case involves the issue of modification of the Settlement Agreement. Specifically, the issue is whether the parties properly modified Section 2.14 of the Settlement Agreement so that Husband can avoid the provision that requires him to pay Wife for 45% of the net value of the Development Property.

The trial court did not enter any findings of fact; instead, it merely concluded that "the Quitclaim Deed by the[Wife] to the [Husband] does not extinguish her rights and interest in the Development Property as identified in Section 2.4 [sic] of the Settlement Agreement of November 23rd, 1998." *Appellant's App.* at 19. In reaching this conclusion, the trial court had to find that the language in Section 2.14 was superior to the Quitclaim Deed.

We begin by noting that, when dissolving a marriage, "the parties are free to craft an agreement providing for the maintenance of either party, the custody and support of the parties' children, and the disposition of property." *Bailey v. Mann*, 895 N.E.2d 1215, 1217 (Ind. 2008) (citing Ind. Code § 31-15-2-17). "Settlement agreements become binding

contracts when incorporated into the dissolution decree and are interpreted according to the general rules for contract construction. *Id*. (citing *Shorter v. Shorter*, 851 N.E.2d 378, 382-83 (Ind. Ct. App. 2006)). Unless the terms of the agreement are ambiguous, they will be given their plain and ordinary meaning. *Id*. (citing *Shorter*, 851 N.E.2d at 383). Terms are not ambiguous merely because the parties disagree as to the proper interpretation of those terms. *Id*. Interpretation of a settlement agreement, as with any other contract, presents a question of law and is reviewed de novo. *Id*.

Our Supreme Court recently explained:

> [T]he goal of courts in interpreting a settlement agreement is to ascertain and give effect to the parties' intent. Rules of contract construction and extrinsic evidence may be employed in giving effect to the parties' reasonable expectations. When a contract's terms are ambiguous or uncertain and its interpretation requires extrinsic evidence, its construction is a matter for the fact-finder. Hindsight tells us that the parties could have negotiated terms to resolve the present dispute, but they did not. Thus, the courts are left to divine their likely intent.

Johnson v. Johnson, 920 N.E.2d 253, 256 (Ind. 2010) (internal citations omitted).

Here, neither party suggests that the Settlement Agreement is ambiguous. Rather, the parties dispute whether the Settlement Agreement was modified when Wife entered into the Quitclaim Deed. The Settlement Agreement provided in pertinent part as follows:

> 2.14. Development Property. The parties are owners of development property located in the Nestledown Farms Subdivision (three unsold lots and 19.19 acres of development property) 15900 East 113th Street, Fortville, Indiana 46040. Husband and Wife will own said development property as 55/45 co-investors/owners. All decisions regarding the development must be agreed [to] by both parties. No advances, encumbrances, or any debts shall be incurred without both parties' consent. The Union Federal "Development Account/Credit Line" shall require both parties' signature for increasing the debt or incurring new debt. The parties will use their best efforts to sell the

> real estate. If the development property is not sold within two years of the date of divorce, each party shall name a qualified appraiser, and those two appraisers will agree on a third qualified appraiser who will appraise the real estate. Husband shall buy Wife out at 45% of the net (after deducting the then outstanding mortgage balance) equity in a lump sum. Said payment to occur within 30 days of the appraisal.
>
> Husband and Wife to divide any distributions from the development with Husband to receive 55% and Wife to receive 45%.

Appellant's App. at 32-33.

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). Here, the Settlement Agreement allowed for modification as follows:

> 6.04. Modification or Waiver. No modification or waiver of any of the terms of this Agreement shall be valid, unless in writing and executed by both parties hereto, or made by a court of competent jurisdiction.

Id. at 39.

Under the Settlement Agreement, both parties agreed that Wife would get 45% of the net value of the Development Property, valued as of the earlier of the date the Development Property sold or two years after the dissolution of the parties' marriage. Husband contends, however, that Wife modified the Settlement Agreement when she transferred her interest in the Development Property by means of the Quitclaim Deed. We disagree.

Here, the parties agreed that the Settlement Agreement could only be modified "in writing and executed by both parties" or "by a court of competent jurisdiction." *Appellant's App*. at 39. Although the parties did not petition the trial court to modify Section 2.14 of the

Settlement Agreement by means of the Quitclaim Deed, they still had the power to validly modify that section of the Settlement Agreement if "in writing and executed by both parties." *Id*. However, no such modification occurred because Wife was the only signatory to the Quitclaim Deed. Moreover, had Husband intended for the Quitclaim Deed to modify the Settlement Agreement, he would have, as he had done in his Marital Residence quitclaim deed, included a reference to the Settlement Agreement. Wife's Quitclaim Deed concerning the Development Property, which was prepared by Husband's attorney, contained no such reference to the Settlement Agreement. The Quitclaim Deed did not modify Section 2.14 of the Settlement Agreement. Without such a modification, Husband still owed Wife 45% of the value of the Development Property.

Finding, as we do, that the Quitclaim Deed did not modify the terms of Section 2.14 of the Settlement Agreement, we must return to the wording of that section, which provides:

> If the development property is not sold within two years of the date of divorce, each party shall name a qualified appraiser, and those two appraisers will agree on a third qualified appraiser who will appraise the real estate. Husband shall buy Wife out at 45% of the net (after deducting the then outstanding mortgage balance) equity in a lump sum. Said payment to occur within 30 days of the appraisal.

Id. at 32-33. This language does not allow this court to reach the result reached by the trial court, namely that Husband owed Wife 45% of the net value of the Development Property as of the date of its January 2008 sale.

Under the Settlement Agreement, the parties were to use their best efforts to sell the Development Property, and "[i]f the development property is not sold within two years of the date of divorce, each party shall name a qualified appraiser, and those two appraisers will

agree on a third qualified appraiser who will appraise the real estate." *Appellant's App.* at 32. Because the property did not sell within two years, the valuation date was November 23, 2000, two years after the date their marriage was dissolved. Husband was required to "buy Wife out at 45% of the net [of the appraised value] (after deducting the then outstanding mortgage balance) equity in a lump sum. Said payment to occur within 30 days of the appraisal." *Id*. at 33.

Section 2.14 of the Settlement Agreement sets forth the process for the parties to obtain the appraised value of the unsold Development Property; a process that contemplates the passage of at least some time after the November 23, 2000 deadline. Even so, the language in Section 2.14 unambiguously reflects the parties' intention that Husband's purchase of Wife's share would occur fairly soon after the November 23, 2000 date.[2] Wife is entitled to 45% of the net value of the property as of November 23, 2000, not 45% of its net value when it sold more than seven years later. This is the bargain the parties struck, and the one that the trial court approved. Extending the time until the Development Property sold in January 2008 would impermissibly modify the property settlement agreement.

In summary, we agree with the trial court that the Quitclaim Deed did not modify Section 2.14 of the Settlement Agreement or extinguish Wife's right to 45% of the net value of the Development Property. However, we disagree with the trial court's determination that Husband "shall . . . pay to her [] 45% of the net proceeds" *from the sale* of the Development

[2] It is reasonable to assume that it was the parties' original intent for Husband's buy out to occur sometime before the February 1, 2001 maturity date on the Note; a time at which the loan against the Development Property would have to be refinanced.

Property. Instead, we remand this issue to the trial court with instructions that the trial court hold a hearing to determine Wife's share of the Development Property, *i.e.*, the amount that represents 45% of the net value of the property after deducting the outstanding mortgage balance as of the same date based upon the appraised value of the property as of November 28, 2000.

II. Child Support

During the January 13, 2011 hearing, the parties stipulated as to the net amount of child support payments that Husband had overpaid. This stipulation was reflected during the hearing when counsel for both parties agreed to a net overpayment in the amount of $12,942.54, which reflected an overpayment by Husband of $14,762.23 minus Wife's credit "in the amount of $1,819.69 for uninsured healthcare expenses, extracurricular expenses, etcetera." *Tr*. at 4-6. Husband contends that the trial court erred by failing to include this stipulation in the Order. We agree.

The peculiar nature of a stipulation is that it establishes a particular matter as a fact. *Ehle v. Ehle*, 737 N.E.2d 429, 433 (Ind. Ct. App. 2000). "Once the parties enter into a stipulation, and the court approves it, the stipulation is binding upon all involved." *Id*. at 433-34. "As a general rule, stipulations may not be withdrawn without the consent of both parties, or for cause." *Harlan v. Harlan*, 544 N.E.2d 553, 556 (Ind. Ct. App. 1989), *aff'd,* 560 N.E.2d 1246 (Ind. 1990). Typically, the grounds for setting aside a stipulation include fraud, mistake, undue influence, or grounds of a similar nature. *Id*.

Here, both parties stipulated that Husband had overpaid child support payments and that Wife owed Husband a net amount of $12,942.54. While Wife argues on appeal that the omission of this stipulation from the Order is harmless error, she "does not deny th[e] stipulation nor its enforceability." *Appellee's Br.* at 26. On remand, we instruct the trial court to enter an order enforcing this stipulation that Wife owes Husband a net amount of $12,942.54, which reflects the difference between Husband's overpayment of child support and the amount that he owes to Wife as reimbursement for uninsured healthcare and other expenses.

III. Attorney Fees

Husband finally argues that the trial court abused its discretion in awarding Wife attorney fees in the amount of $20,000.00. In light of our remand with instructions that the trial court calculate Wife's share of the Development Property as of November 23, 2000, we also remand with instructions that the trial court vacate the order regarding attorney fees. We instruct the trial court to enter findings consistent with Indiana Code section 34-52-1-1(b), Professional Conduct Rule 1.5(a), and relevant caselaw regarding the basis, if any, for awarding attorney fees and for the specific amount of such fees. *MacIntosh v. MacIntosh*, 749 N.E.2d 626, 633 (Ind. Ct. App. 2001), *trans. denied*; *see Lumbermens Mut. Cas. Co. v. Combs*, 873 N.E.2d 692, 724 (Ind. Ct. App. 2007) (award of attorney fees vacated and issue remanded for new evidentiary hearing and entry of detailed findings), *trans. denied*.

Affirmed in part, reversed in part, and remanded with instructions.

BAKER, J., and BROWN, J., concur.