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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM POND,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 90A05-1101-PL-14
	)	
PAUL B. MCNELLIS and LINDA PETERS CHRZAN,	)	
	)	
Appellees.	)	

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause No. 90C01-0701-PL-1

December 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

William Pond appeals the trial court's order concluding that he shall take nothing by way of his complaint against Paul McNellis and Linda Chrzan, attorneys who represented his ex-wife, Brenda Armentrout. Pond raises three issues which we consolidate and restate as whether the trial court erred in determining that Pond was not entitled to further restitution. We affirm.

CASE HISTORY

The relevant facts follow. This is the fifth appeal concerning the dissolution of marriage between Pond and Armentrout. See Pond v. Pond, No. 02A03-9710-CV-379 (Ind. Ct. App. June 22, 1998), trans. denied; Pond v. Pond, 700 N.E.2d 1130 (Ind. 1998); Armentrout v. Pond, No. 02A04-0008-CV-348 (Ind. Ct. App. April 19, 2001), trans. denied; and Pond v. McNellis, 845 N.E.2d 1043 (Ind. Ct. App. 2006), trans. denied.

On August 14, 1993, Pond and Armentrout entered into a postnuptial agreement, Paragraph 25 of which states:

> In the event an attack by one party as to the validity of this agreement is unsuccessful, the party initiating such action shall be responsible for all attorney's fees and costs incurred by both parties in the prosecution or defense of such action.

845 N.E.2d at 1046. On November 17, 1993, Armentrout filed for dissolution. Id. McNellis and Chrzan represented Armentrout in the dissolution proceedings, in which Armentrout challenged the validity of the postnuptial agreement. Id.

On July 28, 1994, the trial court entered an order stating:

> [A]ttorney fees are ordered to be paid by [Pond] to [Armentrout's] attorney in the sum of Twelve Thousand Dollars ($12,000.00) on or before fifteen (15) days from the date hereof, and the Court will at a later date determine whether said payment, along with any other payments made by either party, will constitute the payment of attorney fees provided by Indiana Statutory

> authority for awarding of attorney fees or whether said payments shall constitute payments as a portion of property division.

Plaintiff's Exhibit 16 at 3.

On September 8, 1995, in the dissolution proceeding, the trial court approved the parties' postnuptial agreement and ordered the parties to perform its terms except for Paragraph 25, which the trial court held to be unconscionable. Pond, 700 N.E.2d at 1134. After rejecting Paragraph 25, the trial court ordered that Pond "should be responsible for the payment of attorney fees on behalf of [Armentrout] in the sum of $69,000.00 which is ordered paid in full by [Pond] sixty (60) days from the date hereof." 845 N.E.2d at 1046-1047.

"Pond appealed the trial court's dissolution decree and raised the following issue, 'whether the trial court erred by holding paragraph 25 of the postnuptial agreement, requiring the party unsuccessfully attacking the agreement to pay the attorney's fees incurred, unconscionable.'" Id. at 1047 (quoting In re Marriage of Pond, 676 N.E.2d 401, 405 (Ind. Ct. App. 1997), affirmed in part and reversed in part, 700 N.E.2d 1130 (Ind. 1998)). While the appeal was pending, on October 16, 1995, McNellis and Chrzan filed a notice of intent to file and hold an attorney fee lien for their fees due and owing on the judgment rendered in favor of Armentrout in the amount of $69,743.86. Id.

At some point, Pond and Armentrout received an offer to sell their real estate. Id. Pond filed an emergency motion to escrow the proceeds of the sale of real estate and for a stay of the proceedings. Id. On October 18, 1996, the trial court entered a ruling on Pond's motion ordering that the attorney fee lien in the amount of $69,000 be paid from the proceeds of the sale of the parties' real estate. Id. At the closing, the gross amount

due to the Ponds was reduced by $69,000 for the release of the attorney fee lien to McNellis. Id. at 1048.

This court handed down its opinion regarding Pond's appeal on February 24, 1997, and affirmed the trial court's decision regarding Paragraph 25. In re Marriage of Pond, 676 N.E.2d at 401. The Indiana Supreme Court granted transfer and addressed the enforceability of Paragraph 25, the provision shifting attorney fees, and held:

> To the extent that the judgment of dissolution rejects and refuses to enforce Paragraph 25, we reverse. As previously noted, the trial court, intentionally disregarding Paragraph 25, determined that the husband should pay $69,000.00 of the $89,262.25 attorney fees claimed by the wife. On remand, the trial court shall give full force and effect to this provision by determining the amount of reasonable attorney fees and costs that the parties incurred directly from the challenge to the validity of the parties' settlement agreement, and shall reduce its prior award of attorney fees accordingly.

Pond, 700 N.E.2d at 1137 (footnote omitted).

Meanwhile, on June 27, 1997, the trial court ordered Pond to pay Armentrout's attorney fees of $36,000. Specifically, the court found that Pond was entitled to $1,000 in fees as sanctions under Ind. Trial Rule 37, that Armentrout was entitled to payment of $7,000 from Pond of fees related to the custody litigation and appellate fees and that Pond's "decision to allow the parties' real estate to fall into foreclosure and his greater present and future income potential support a finding for an assessment of fees against [Pond] in the sum of Thirty Seven Thousand Dollars ($37,000.00)." Plaintiff's Exhibit 23 at 25. On appeal, this court held that "any attorney's fees awarded as a result of the foreclosure action should not be recoverable." In re Marriage of Pond, No. 02A03-9710-

CV-379, slip op. at 18. The fee awards based upon the trial court's orders of July 28, 1994, September 8, 1995, and June 27, 1997, were paid by Pond.

On December 2, 1998, Pond filed a request for a pre-trial conference, which listed only Armentrout as the respondent, and argued:

> 2. The Supreme Court's ruling necessitates the consideration by this Court of the following issues:
>
> 2.1 Determining the fees incurred by [Pond] in defending [Armentrout's] contest of validity of the parties[']s [postnuptial] agreement;
> 2.2 Determining the extent to which the attorney's fees previously awarded to [Armentrout] include an award for fees incurred by her in connection with contesting the validity of the parties' [postnuptial] agreement;
> 2.3 Reversing this Court's prior award of spousal maintenance to [Armentrout]; and
> 2.4 Determining whether, to the extent this Court's prior award of attorney's fees to [Armentrout] was improper, any of the amounts paid by [Pond] may be recovered directly from attorneys McNellis and Chrzan.

845 N.E.2d at 1048.

On October 5, 1999, the trial court entered an order which determined that Armentrout was "the primary responsible party for the reimbursement of any or all of the judgment for attorney fees paid by [Pond] and remanded for further consideration," and that McNellis and Chrzan were "relieved from liability for restitution of any fees as may be determined by this court as directed under the remand . . . ." Id. at 1050. On November 2, 1999, Pond filed a motion to correct error and alternative request for certification of the trial court's order for interlocutory appeal, which the court later denied. Id. at 1050.

On October 15, 2002, Husband and Wife filed a Stipulation and Agreed Judgment, which stated:

STIPULATION AND AGREED JUDGMENT

[Pond], Petitioner, by counsel, and [Armentrout], Respondent, by counsel file this Stipulation and Agreed Judgment as follows:

PRELIMINARY STATEMENT

1. It is the desire of both [Armentrout] and [Pond] to make a final determination of certain Postnuptial Agreement litigation expense liability and to return the parties to their respective status had previous Trial Court rulings been made in accordance with the subsequent Appellate and Supreme Court rulings.

* * * * *

30. By order dated October 26, 1998, the Indiana Supreme Court reversed Judge Hultquist's decision and ordered the Court on remand to "give full force and effect to [the attorney fee provision in the postnuptial Agreement] by determining the amount of reasonable attorney fees and costs that the parties incurred directly from the challenge to the validity of the parties' settlement agreement, and shall reduce its prior award of attorney fees accordingly."

31. Pursuant to the Supreme Court's decision, on August 24, 1999, [Pond] filed a request for the Court to determine the amount of reasonable attorney's fees and costs incurred in the challenge of the validity of the parties' settlement agreement and to reduce prior awards accordingly.

32. The Trial Court previously issued the following awards of attorney's fees (collectively, the "Fee Orders") in favor of [Armentrout]:

Date of Award	Award Amount
28-Jul-94	$12,000.00
8-Sep-95	$69,000.00
27-Jun-97	$36,000.00
Total	$117,000.00

33. The Fee orders were rendered prior to the Indiana Supreme Court decision of October 26, 1998 that ordered reduction of [Armentrout's] prior attorney's fee awards.

34. The Fee Orders have been paid in full by [Pond] and were directly paid to [Armentrout's] attorneys.

35. The Fee Orders include attorneys' fees associated with litigation of the Postnuptial Agreement.

36. It is the desire of both [Armentrout] and [Pond] to return the parties to their respective status had each Fee Order been made in accordance with the subsequent Supreme Court ruling upholding the validity of the Postnuptial Agreement.

37. Both [Armentrout] and [Pond] agree that each Fee Order should be reviewed separately and corrected in such a manner as to return all parties more completely to the position they occupied had the Postnuptial Agreement been given full force and effect.

July 28, 1994 Attorney Fee Order

38. [Pond] and [Armentrout] acknowledge and agree that 100% of the attorney's fees awarded to [Armentrout] in the July 28 Fee Order were for the express purpose of challenging the validity of the Postnuptial Agreement.

39. Accordingly, the July 28 Fee Order should be reduced to $0.00 in favor of [Armentrout].

September 8, 1995 Attorney Fee Order

40. The parties acknowledge and agree that:

    a. In the September 8 Fee Order, the Trial Court ordered [Pond] to pay an additional $69,000 of [Armentrout's] attorney's fees and expenses, for a total attorney fee award through September 8, 1995 of $81,000;
    b. [Armentrout] was not ordered to pay any amount for [Pond's] attorney's fees and expenses;
    c. As of September 8, 1995, $52,958.87 of [Armentrout's] legal expenses had been incurred in connection with contesting the validity of the Postnuptial Agreement;

d. As of September 8, 1995, $28,041.13 of [Armentrout's] legal expenses had been incurred in connection with the dissolution and child custody issues; and
e. As of September 8, 1995, [Pond] had incurred $59,221.49 in legal expenses associated with the Postnuptial Agreement.

41. The parties stipulate and agree that [Pond] shall be charged with 100% of [Armentrout's] legal expenses related to the issues of dissolution and child custody, but none of the legal expenses associated with contesting the validity of the Postnuptial Agreement.

42. Because [Pond's] legal expenses as of the September 8, 1995 Fee Order, defending the validity of the Postnuptial Agreement were greater than [Armentrout's] legal expenses in connection with the dissolution and child custody issues in the September 8 Fee Order, no fees should have been ordered to be paid by [Pond] to [Armentrout] or her attorneys; instead [Pond] was entitled to an award of legal fees in the amount of $31,180.36.

June 27, 1997 Attorney Fee Order

43. On June 27, 1997, [Armentrout] was awarded $36,000.00 ($37,000.00 minus $1,000.00 for contempt) for additional attorney's fees.

44. After the September 8, 1995 Fee Order but prior to the June 27, 1997 Fee Order, both [Armentrout] and [Pond] incurred litigation expenses for child custody as well as for issues related to the appeal and enforcement of the Postnuptial Agreement.

45. The parties acknowledge and agree that, from September 8, 1995 through June 27, 1997, [Pond] incurred $77,027.53 for costs related to the defense and enforcement of the Postnuptial Agreement.

46. The parties further acknowledge and agree that from September 8, 1995 through June 27, 1997, [Armentrout] incurred legal expenses associated with dissolution and child custody and support issues of $6,000.

47. Because [Pond's] legal expenses litigating the Postnuptial Agreement were greater than [Armentrout's] legal expenses in connection with the dissolution and child custody issues in the June

27, 1997 Fee Order, no fees should have been ordered to be paid by [Pond] to [Armentrout] or her attorneys; instead, [Pond] was entitled to an award of legal fees in the amount of $71,027.53.

Attorney Fees June 27, 1997 to Present

48. The parties acknowledge and agree that:

    a. From June 27, 1997 through September 26, 2001, [Pond] incurred an additional $28,322.64 in attorney's fees associated with enforcing the Postnuptial Agreement.
    b. [Pond] anticipates incurring an additional $10,000.00 in enforcing the Postnuptial Agreement.
    c. The total attorney's fees incurred by [Pond] defending and enforcing the Postnuptial Agreement from June 27, 1997 to the present are $38,322.64; and
    d. The total attorney's fees incurred by [Pond] in connection with defending and enforcing the Postnuptial Agreement are $174,571.66, none of which has been previously paid by [Armentrout].

As of Order Date	[Pond's] Expense
8-Sep-95	$59,221.49
27-Jun-97	$77,027.53
23-Jan-02	$38,322.64
Total [Pond]	**$174,571.66**

49. The parties further acknowledge and agree that:
    a. [Pond] is entitled to interest on the amounts erroneous [sic] paid by him from the date of payment until the date of reimbursement; and
    b. [Pond] is entitled to interest in the amount of $197,052.42 . . . .

50. After determining the attorneys' fees to which [Pond] is entitled, the fees to which [Armentrout] is entitled, and after application of all appropriate credits, there is due to [Pond] by [Armentrout] the sum of $454,582.95, calculated as follows:

[Armentrout's] Postnuptial Litigation Fees Erroneously Paid by Petitioner	$117,000.00
[Pond's] Postnuptial Litigation Expense	$174,571.66
Interest due as of 8/1/02	$197,052.42
Subtotal Due [Pond]	$488,624.08

Less [Armentrout's] Attorney Fees for Dissolution & Child Matters	$34,041.13
Total Due [Pond]	**$454,582.95**

51. The parties further stipulate and agree that [Armentrout] shall transfer to [Pond] her interest in certain Polis Partnership and Sundance Corporation in exchange for a credit in the amount of $200,000.

52. The parties desire to fully and finally resolve all matters pending on the date of this Stipulation and Agreed Judgment.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:

a. The July 27, 1994, September 8, 1995 and June 27, 1997 awards of attorneys' fees in favor of [Armentrout], and the Interlocutory Order, are hereby vacated in their entirety.

b. [Pond] has paid [Armentrout] all expenses incurred by [Armentrout] in connection with dissolution and custody matters in the amount of $34,041.13, which amount has already been credited in these calculations with no net award due her because of the amounts that she owes to [Pond].

c. Judgment is hereby rendered against [Armentrout] and in favor of [Pond] in the sum of $454,582.95 for [Pond's] net legal expenses defending and enforcing the Postnuptial Agreement, for [Armentrout's] Postnuptial Agreement litigation expenses that [Pond] has previously paid and for which he is entitled to reimbursement, and for interest due on such sums from the date of payment.

d. [Armentrout] shall, within 10 days, convey to [Pond] her interest in Polis Partnership and Sundance stock and shall receive a credit of $200,000 against the judgment with such credit, any other amounts paid by [Armentrout], and any amounts recovered by [Pond] from any other source as reimbursement for attorney's fees, being be [sic] applied in the order the legal fees were originally paid by [Pond], from the earliest to the latest.

e. [Armentrout] shall execute all appropriate documents necessary to effectuate the transfers of Polis Partnership and the Sundance stock. In the event [Armentrout] fails to execute any such document within 10 days, [Pond] is hereby appointed as [Armentrout's] special

attorney-in-fact for the purpose of effecting the transfers of the Polis Partnership and Sundance corporate stock.

f. [Armentrout] shall further provide such cooperation as [Pond] may reasonably require in connection with any claim against third parties for the reimbursement of attorney's fees, including providing to [Pond] a current financial statement.

Plaintiff's Exhibit 29 at 1-11.

On October 10, 2003, Pond filed a complaint against McNellis and Chrzan for recovery of attorney fees wrongfully paid. 845 N.E.2d at 1053. Pond argued that the Stipulation and Agreed Judgment vacated the attorney fee awards and that "[a]s a result of the vacating of the Attorney Fee Awards, McNellis and Chrzan are obligated to return to Pond the attorney's fees erroneously paid to them . . . plus interest from the date of the respective payments." Plaintiff's Exhibit 32 at 3. Pond asked that judgment be granted in his favor and against McNellis and Chrzan "jointly and severally, in the sum of $117,000, plus prejudgment interest through the date of the judgment." Id. at 4. McNellis and Chrzan filed a motion to dismiss in which they argued that: (a) the trial court did not have jurisdiction to vacate the order awarding attorney fees with the agreed entry; (b) Pond's claim was barred under the doctrine of res judicata because Pond failed to join McNellis and Chrzan as parties needed for just adjudication in the previous action; (c) Pond and Armentrout could not stipulate to questions of law in the agreed entry; and (d) Armentrout was the proper party from whom Pond should seek restitution of any attorney fees wrongfully paid. 845 N.E.2d at 1053.

The trial court ruled that McNellis and Chrzan's motion to dismiss would be treated as a motion for summary judgment. Pond filed a motion for summary judgment

in which he argued that: (a) he was entitled to recovery of $117,000 from McNellis and Chrzan as a matter of law; and (b) his lawsuit was not barred. Id. On June 9, 2005, the court issued an order that denied Pond's motion for summary judgment and granted McNellis and Chrzan's motion for summary judgment. Id. On appeal, this court reversed the trial court's grant of summary judgment to McNellis and Chrzan and affirmed in part and reversed in part the trial court's denial of summary judgment to Pond. Id. at 1063. Specifically, the court held that the trial court "should have granted Pond's motion for summary judgment to the extent that McNellis and Chrzan were liable for restitution, but denied summary judgment regarding the amount of attorney fees, which remains an issue to be decided by the trial court." Id.

On May 26 and 27, 2009, the court held a hearing to determine the amount of restitution that Pond should receive from McNellis and Chrzan. On December 15, 2010, the court entered an order concluding that Pond should take nothing by way of his complaint. Specifically, the court's order states in part:

> **I. FINDINGS OF FACT:**
>
> 1. McNellis and Chrzan represented [Armentrout] in dissolution, Custody and Postnuptial Agreement litigation from 1993 through 1998, during which [Armentrout] incurred attorney fees totaling One Hundred Seventy-four Thousand Six Hundred Forty-nine Dollars ($174,649.00). (Testimony of Paul B. McNellis and Linda Peters Chrzan; Tab 14).
>
> 2. William Pond expended a total of One Hundred Thirty-nine Thousand Four Hundred Fifty-three Dollars and Eighty-two Cents ($139,453.82) for his attorney fees from January, 1994 thru July, 1997. (Pond's attorney Brian T'Kindt).
>
> 3. Of the One Hundred Seventy-four Thousand Six Hundred Forty-nine Dollars ($174,649.00), Defendants testified that Thirty-seven

Thousand One Hundred Fifty-three Dollars and Sixty-three Cents ($37,153.63) was expended as to fees related to the [postnuptial] agreement.

4. Of the One Hundred Thirty-nine Thousand Four Hundred Fifty-three Dollars and Eighty-two Cents ($139,453.82) expended by William Pond, Brian T'Kindt testified that Sixty-eight Thousand Two Hundred Sixty-three Dollars and Thirteen Cents ($68,263.13) was expended as to fees related to the Postnuptial Agreement.

5. The court finds that the magnitude of the fees expended by both sides confirms that this was a contentious dissolution and that both sides viciously litigated every detail of the dissolution.

6. The court finds that the only credible evidence of the breakdown of attorney fees related to the Postnuptial Agreement was offered by the attorneys who actually performed the legal work.

7. The court finds the testimony of the attorneys as to the respective proportional share expended by each party as to the Postnuptial Agreement to be similar and not disproportional.

8. The court finds that Pond v. Pond, 700 N.E.2d 1130 (Ind. 1998) and Pond v. McNellis, 845 N.E.2d 1043 (Ind. [Ct. App.] 2006) requires that William Pond be reimbursed for funds expended by him for litigation costs related to the Postnuptial Agreement.

9. The court finds that the reception by William Pond of the total of the sums testified to by attorney Brian T'Kindt, Sixty-eight Thousand Two Hundred Sixty-three Dollars and Thirteen Cents ($68,263.13), and attorney Chrzan, Thirty-seven Thousand One Hundred Fifty-three Dollars and Sixty-three Cents ($37,153.63), would return Pond that amount awarded to him by the cases of Pond v. Pond, and Pond v. McNellis.

10. The court finds that the settlement agreement between Pond with [Armentrout] was for settlement of their claims against each other post Pond v. Pond, and Pond agreed to pay [Armentrout's] legal fees unrelated to the Postnuptial Agreement. (Tab 29).

* * * * *

12. The court finds that the amount of the benefit of the settlement agreement conferred upon Pond by this agreement exceeded all fees

incurred by Dr. Pond as to litigation expenses related to the Postnuptial Agreement by more than One Hundred Thousand Dollars ($100,000.00).

13. The court finds that since Pond received a settlement from [Armentrout] as to attorney fees in excess of all attorney fees expended as to the Postnuptial Agreement by more than Ninety-four Thousand Dollars ($94,000.00), the issue of interest claims has been rendered moot by the 2002 settlement.

* * * * *

18. [Armentrout] incurred attorney fees with McNellis and Chrzan related to the issues of dissolution, child custody and the validity of the Postnuptial Agreement in the sum of One Hundred Seventy-four Thousand Six Hundred Forty-nine Dollars ($174,649.00). (Tab 14, Testimony of Linda Peters Chrzan).

19. Of this One Hundred Seventy-four Thousand Six Hundred Forty-nine Dollars ($174,649.00), Thirty-seven Thousand One Hundred Fifty-three Dollars and Sixty-three Cents ($37,153.63) was incurred contesting the validity of the Postnuptial Agreement. (TAB 14, Testimony of Linda Peters Chrzan).

20. The remainder, One Hundred Thirty-seven Thousand Four Hundred Ninety-five Dollars and Thirty-seven Cents ($137,495.37), were incurred by [Armentrout] for dissolution and custody related issues. (Testimony of Linda Peters Chrzan).

* * * * *

23. Pond and [Armentrout] entered into a Stipulation and Agreed Judgment, which was filed with the Allen Circuit Court on October 15, 2002. (Tab 29).

24. At paragraph forty-one (41), page seven (7), of the Stipulation and Agreed Judgment, Pond agreed that he:

> "shall be charged with 100% of Respondent's legal expenses related to the issues of dissolution and child custody, but none of the legal expenses associated with contesting the validity of the Postnuptial Agreement."

(Tab 29).

* * * * *

27. Pursuant to the Stipulation and Agreed Judgment filed with the Allen Circuit Court on October 15, 2002, Pond received the value of the Two Hundred Thousand Dollars ($200,000.00) from [Armentrout] to reimburse him for attorney fees incurred regarding the validity of the Postnuptial Agreement. (Tab 29).

28. Pond has been fully reimbursed by [Armentrout].

29. Although it is not for the court to ascertain if [Armentrout] overpaid Pond under the settlement agreement, the court cannot ignore the fact that Pond, by his settlement agreement, has already received money that exceeds the total of attorney fees expended by both sides as to the [postnuptial] agreement. (Testimony of attorneys T'Kindt and Chrzan).

30. Pond cannot recover more from [Armentrout], McNellis and Chrzan than was billed to [Armentrout] by her attorneys and Pond by his attorneys for work specifically contesting the validity of the Postnuptial Agreement. The court finds upon the testimony of the trial attorneys, as to the actual fees expended for the [postnuptial] litigation, that Pond has received full restitution from [Armentrout] under the settlement agreement.

31. There is nothing in the record of either Pond v. Pond or Pond v. McNellis to suggest that if the trial court had enforced the Postnuptial Agreement in its entirety, [Armentrout] would not have received attorney fee awards to assist her in paying of her legal fees incurred for work on dissolution and custody issues. (Pond settlement agreement requires Pond to pay [Armentrout's] fees).

32. On October 26, 1998, the Indiana Supreme Court ruled that:

> "On remand, the trial court shall give full force and effect to this provision by determining the amount of reasonable attorney fees and costs that the parties incurred directly from the challenge to the validity of the parties' settlement agreement, and shall reduce its prior award of attorney fees accordingly." Pond v. Pond, 700 N.E.2d 1130 at 1137.

33. Pond may seek restitution from McNellis and Chrzan, but the court finds that the settlement agreement between Pond and [Armentrout] has in fact fully compensated Pond.

34. McNellis and Chrzan owe Pond no reimbursement obligation, because Pond has been made whole by the Two Hundred Thousand Dollars ($200,000.00) in value he received from [Armentrout] in 2002. (Tab 29).

35. It would be inequitable to allow Pond to receive both the value of $200,000 from [Armentrout] and also to make a recovery against her agents McNellis and Chrzan for the same sum. The law does not allow Pond a double recovery.

36. The issue of interest is moot as the court finds the 2002 settlement agreement made Pond whole as of 2002.

* * * * *

II. CONCLUSIONS OF LAW:

* * * * *

5. The October, 2002 Stipulation entered into by [Armentrout] and Pond is not binding on McNellis and Chrzan, but is binding on [Armentrout] and Pond. Pond v. McNellis, 845 N.E.2d 1043, 1062 (Ind.App.2006).

* * * * *

7. The Supreme Court ordered on remand that the trial court shall determine "the amount of reasonable attorney fees and costs that the parties incurred directly from the challenge to the validity of the parties' settlement agreement, and shall reduce its prior award of attorney fees accordingly." Pond v. Pond, 700 N.E.2d 1130, 1137 (Ind. 1998).

8. Pond may seek reimbursement from McNellis and Chrzan for the portion of the fees he paid to them which were incurred by [Armentrout] contesting of the Postnuptial Agreement, for *which* he has not been compensated. Pond has been compensated for fees paid to Defendants by [Armentrout's] settlement with Pond in 2002. (Tab 29).

* * * * *

16. Prejudgment interest cannot accrue where restitution has been previously made. Therefore, interest has not accrued and is not collectable by Pond.

17. It would be inequitable to allow Pond to receive both the value of $200,000 from [Armentrout] and also to make a recovery against her agents McNellis and Chrzan for the same sum plus interest. Equity and logic do not allow double recovery.

* * * * *

19. Pond has not met his burden of proof that restitution is due him from the Defendants.

III. ORDER:

1. Pond was fully reimbursed for any fees he wrongfully paid to McNellis and Chrzan by his reception of Two Hundred Thousand Dollars ($200,000.00) from [Armentrout], inasmuch as [Armentrout] was ultimately responsible for such fees. (Tab 29).

2. Restitution cannot be claimed by one who has been fully compensated. Compensation in full is full compensation regardless of its source.

3. Pond shall take nothing by way of his Complaint.

Appellant's Appendix at 7-17.

ISSUE

The issue is whether the trial court erred in determining that Pond was not entitled to further restitution. At the outset we note that specific findings of fact and conclusions were requested. When a party has requested specific findings of fact and conclusions pursuant to Ind. Trial Rule 52(A), this court may affirm the judgment on any legal theory supported by the findings. Turner v. Freed, 792 N.E.2d 947, 949 (Ind. Ct. App. 2003). When reviewing a judgment, we must first determine whether the evidence supports the findings, and second, whether the findings support the judgment. Id. The judgment will

be reversed if it is clearly erroneous. Id. Findings of fact are clearly erroneous where the record lacks any evidence or reasonable inferences from the evidence to support them. Id.

A. Whether McNellis and Chrzan were Entitled to Attorney Fees

Pond argues that the court erred by allowing McNellis and Chrzan to his funds when they failed to present any evidence to support an award of attorney fees in favor of his ex-wife.[1] Specifically, Pond argues that McNellis and Chrzan "had the burden to prove that [Armentrout] was *entitled* to an award of fees." Appellant's Brief at 12 (emphasis added). Pond cites Thompson v. Thompson, 696 N.E.2d 80 (Ind. Ct. App. 1998), and argues that this would require evidence of the factors associated with a fee award in the first instance including the resources of the parties, the economic condition of the parties, the ability of the parties to engage in gainful employment and to earn adequate income and any other factors that bear on the reasonableness of an award of attorney fees. Pond also argues that "the only 'findings' in support of an award in this instance stem[] from Pond's willingness, *for purposes of the Agreed Judgment*, to be charged with [Armentrout's] fees," and that is insufficient to meet the burden of McNellis and Chrzan. Id. at 13.

[1] We observe that Pond does not cite to the record for most of the statements in the argument section of his brief. We remind Pond that Ind. Appellate Rule 46(A)(8)(a) provides that "[e]ach contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22." At one point, Pond appears to cite to "Chrzan testimony." Appellant's Brief at 16. However, Ind. Appellate Rule 22 provides that "[a]ny factual statement shall be supported by a citation to the page where it appears in an Appendix, and if not contained in an Appendix, to the page it appears in the Transcript or exhibits, e.g., Appellant's App. p.5; Tr. p. 231-32."

To the extent that Pond argues that McNellis and Chrzan "had the burden to prove that [Armentrout] was *entitled* to an award of fees," Appellant's Brief at 21 (emphasis added), we observe, as did the trial court, that Paragraph Number 41 of the Stipulation and Agreed Judgment states: "The parties stipulate and agree that [Pond] shall be charged with 100% of [Armentrout's] legal expenses related to the issues of dissolution and child custody, but none of the legal expenses associated with contesting the validity of the Postnuptial Agreement."[2] Plaintiff's Exhibit 29 at 7. Thus, the question is not whether McNellis and Chrzan are entitled to certain attorney fees but what amount they are entitled to receive. We cannot say that the trial court's judgment was clearly erroneous on this basis.

B. Implementation of Supreme Court's Prior Decision

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[2] At one point in his brief, Pond concedes that he "does not dispute the proposition that [he] and [Armentrout] are each bound by the Agreed Judgment." Appellant's Brief at 13. However, Pond also states that McNellis and Chrzan "were obligated to present the evidence [Armentrout] would have had to present in the event the issues had been litigated in the dissolution case – evidence of the factors necessary to support an award of fees in the first instance." Id. at 14. To the extent that Pond is attempting to challenge the language in the Agreed Judgment indicating that Armentrout is entitled to certain attorney fees, we observe that the Indiana Supreme Court has held:

> In the absence of fraud, parties who are competent to contract and not standing in confidential relations to each other may agree to the rendition of a judgment or decree respecting any right which may be the subject of litigation. When such a decree is entered it is a decree by consent. A consent decree is not a judicial determination of the rights of the parties. It does not purport to represent the judgment of the court, but merely records the agreement of the parties with respect to the matters in litigation. Such decree cannot be reviewed by appeal.
>
> That the judgment was rendered by consent of the parties does not detract from its dignity, or lessen its conclusiveness as an adjudication between the parties, but the consent is a waiver of error precluding a review upon appeal.

State v. Huebner, 230 Ind. 461, 467-468, 104 N.E.2d 385, 387-388 (1952).

Pond argues that the trial court erred in its implementation of the Indiana Supreme Court's prior decision regarding attorney fees. Pond challenges the following conclusion of the trial court:

> 8. Pond may seek reimbursement from McNellis and Chrzan for the portion of the fees he paid to them which were incurred by [Armentrout's] contesting of the Postnuptial Agreement, for *which* he has not been compensated. Pond has been compensated for fees paid to Defendants by [Armentrout's] settlement with Pond in 2002. (Tab 29).

Appellant's Appendix at 14. Pond argues that this conclusion:

> is not only contrary to the Supreme Court's dictate that the trial court "give full force and effect to [paragraph 25] by determining the amount of reasonable attorney fees and costs that the *parties* incurred directly from the challenge to the validity of the parties' settlement agreement, and shall reduce its prior award of attorney fees accordingly," but also fails to take into consideration the ruling by the court of appeals regarding the July '97 Fee Order that "any attorney's fees awarded as a result of a foreclosure action should not be recoverable. Therefore, this cause is remanded to the trial court with instructions to either subtract those fees from the order or provide a more cogent explanation establishing that the attorneys' fees were awarded for proceedings relating to the dissolution proceedings."

Appellant's Brief at 15. Pond argues that "the way to implement [the Indiana Supreme Court's decision] was to determine the fees incurred by both Pond and [Armentrout] in connection with litigating the [postnuptial agreement], and reduce the prior fee awards accordingly." Id. at 16.

The trial court determined the fees incurred by both Pond and Armentrout in connection with litigating the postnuptial agreement. Specifically, the court found that Pond expended $68,263.13 in fees related to the Postnuptial Agreement and Armentrout expended $37,153.63 in fees related to the Postnuptial Agreement. The court then found:

> the reception by [Pond] of the total of the sums testified to by attorney Brian T'Kindt, Sixty-eight Thousand Two Hundred Sixty-three Dollars and Thirteen Cents ($68,263.13), and attorney Chrzan, Thirty-seven Thousand One Hundred Fifty-three Dollars and Sixty-three Cents ($37,153.63), would return Pond that amount awarded to him by the cases of Pond v. Pond, and Pond v. McNellis.

Appellant's Appendix at Tab B, Page 3. Based upon the trial court's finding, we cannot say that the trial court's judgment was clearly erroneous.

Pond also argues that the trial court failed "to take into consideration the ruling by the court of appeals regarding the July '97 Fee Order." Appellant's Brief at 15. In In re: The Marriage of Pond, No. 02A03-9710-CV-379, slip op. at 18 (Ind. Ct. App. June 22, 1998), summarily affirmed in part, 700 N.E.2d 1130 (Ind. 1998), the court held that "any attorney's fees awarded as a result of the foreclosure action should not be recoverable." The court also remanded the cause "to the trial court with instructions to either subtract those fees from the order or provide a more cogent explanation establishing that the attorney's fees were awarded for proceedings relating to the dissolution proceeding." Slip op. at 18. Here, the court's order did not include fees related to the foreclosure action. Again, we cannot say that the court's order was clearly erroneous.

C. Double Recovery

Pond argues that "by the terms of the PNA, to make Pond whole he should not have paid the $117,000.00 to McNellis on [Armentrout's] behalf and instead should have been paid $140,530.53 by [Armentrout]." Appellant's Brief at 20. Pond argues that "[t]he trial court's judgment is premised on the theory that the credit Pond provided to [Armentrout] reimbursed him in full for the amounts sought from Defendants. However, as between Pond and [Armentrout], Pond has not been reimbursed in full." Id. Pond

contends that "[r]ather than allowing Pond a 'double recovery,' as suggested in the trial court's judgment, the trial court's allocation of the credit effectively prevents Pond from obtaining a complete recovery." Id. at 20 (internal citation omitted). Pond also contends that "Defendants are jointly and severally liable with [Armentrout] for reimbursement of fees erroneously paid to them, and [Armentrout] alone is responsible for the fees in excess of those paid to Defendants which she agreed to pay." Id. at 21.

McNellis and Chrzan argue that the Stipulation and Agreed Judgment was "not a judicial act and does not establish the legal invalidity of any prior attorney fee orders as to third parties." Appellees' Brief at 8. McNellis and Chrzan argue that "[a]bsent Mr. Pond's acceptance of consideration valued at $454,582.95 it was possible that Mr. Pond might have had a claim as to McNellis and Chrzan." Id. They also argue that "where multiple parties may be liable to a party and the claimant accepts a sum or consideration (judgment of $454,582.95) that fully covers all of claimant's claims, [] the settlement is a bar to any further claims against other parties." Id. at 9. They argue that Pond offered no evidence that the "moneys he sought from McNellis and Chrzan were over and above the consideration he obtained from the October 15, 2002, $454,582.95 judgment and partial payment of $200,000.00 by Mrs. (Pond) Armentrout for **any and all attorney fees**." Id. at 10. They also argue that "[t]here was no evidence offered at trial to justify how the contested attorney fee order of $69,000.00 at issue in *Pond v. Pond* . . . presently supported an unjust enrichment claim against McNellis and Chrzan for $454,582.95." Id.

In his reply brief, Pond argues that Armentrout "agreed that she was indebted to [Pond] in the amount of $454,582.95, comprised of $117,000 in attorney's fees

wrongfully paid, $140,530 in additional fees to which he was entitled, and interest on such amounts." Appellant's Reply Brief at 3. Pond argues that "[t]he Agreed Judgment was *partially* satisfied by the transfer of certain property by [Armentrout] to Pond, which the parties valued at $200,000. However, even after a credit for the transfer made, there remains due and owing on the Agreed Judgment a considerable sum." Id.

The record reveals that Pond spent $68,263.13 in fees related to the postnuptial agreement to which he would be entitled under Paragraph 25 of the postnuptial agreement. Armentrout spent $174,649, and $37,153.63 of that amount was related to the Postnuptial Agreement. Pursuant to Paragraph 25 and the Stipulation and Agreed Judgment, which indicated that Pond would be charged with Armentrout's legal expenses not associated with contesting the validity of the postnuptial agreement, Armentrout would be entitled to $137,495.37 from Pond. Subtracting the amount of $68,263.13 from the amount of $137,495.37 reveals that Armentrout was entitled to $69,232.24 from Pond. Considering the $117,000 paid by Pond pursuant to the previous trial court orders, Pond would be due to receive $47,767.76. However, the Stipulation and Agreed Judgment required Armentrout to pay Pond for attorney fees related to the postnuptial agreement, and Pond already received $200,000 from Armentrout pursuant to the Stipulation and Agreed Judgment. Again, we cannot say that the trial court's order was clearly erroneous.

For the foregoing reasons, we affirm the trial court's order.

Affirmed.

ROBB, C.J., and KIRSCH, J., concur.