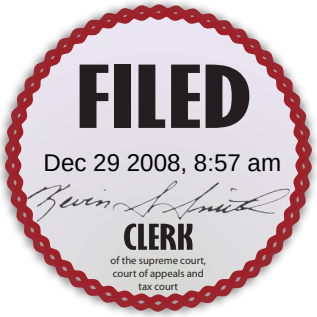

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IN THE
COURT OF APPEALS OF INDIANA

PATRICIA SUE BECK,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 76A03-0807-CV-341
	)	
MARK ALLEN BECK,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE STEUBEN SUPERIOR COURT
The Honorable William C. Fee, Judge
Cause No. 76D01-0511-DR-377

December 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Patricia Sue Beck (Patricia), appeals the trial court's judgment ordering Appellee-Respondent, Mark Allen Beck (Mark), to pay only $2,471.32 of their daughter, K.B.'s, college expenses.

We affirm.

ISSUE

Patricia presents one issue for our review, which we restate as: Whether the trial court erred in applying the college expenses provision of the parties' property settlement agreement.

FACTS AND PROCEDURAL HISTORY[1]

Patricia and Mark married each other on February 14, 1981. Three children were born of the marriage, including K.B., who was born on August 21, 1984. In the fall of 2003, K.B. began attending Huntington University, relying on a combination of scholarships and student loans.

Patricia and Mark separated August 26, 2005, while K.B. was still in school. On November 4, 2005, Patricia filed a petition for dissolution. On January 24, 2006, Patricia and

[1] The table of contents for Patricia's appellate appendix does not include dates for each item included, as required by Indiana Appellate Rule 50(C). Also, we notice that nearly the entire transcript from this case is included in the Appellant's Appendix. We direct counsel to Indiana Appellate Rule 50, which states that the appellant's appendix shall contain, among other things: "(d) the *portion* of the Transcript that contains the rationale of decision and any colloquy related thereto, if and to the extent the brief challenges any oral ruling or statement of decision"; "(g) any other *short excerpts* from the Record on Appeal, in chronological order, such as essential portions of a contract, pertinent pictures, or *brief portions of the Transcript*, that are important to a consideration of the issues raised on appeal"; and "(h) any record material relied on in the brief *unless the material is already included in the Transcript*." (Emphases added). This rule is meant to avoid unnecessary bloating of the appellate record and to streamline our review. In other words, we do not need two copies of the transcript.

Mark filed a property settlement agreement with the trial court, which included the following provision regarding K.B.'s college expenses:

> The parties agree that their minor daughter, [K.B.], is currently enrolled in college. [K.B.] shall be responsible for the first one-third of any college expenses incurred, including tuition, room and board, books, lab fees, supplies, and student activity fees associated with her college education. The remaining two-thirds of college expenses incurred shall be satisfied with [Mark] paying 59% thereof and [Patricia] paying 41% thereof.

(Appellant's App. p. 83). The next day, January 25, 2006, the trial court approved the property settlement agreement and incorporated it into its dissolution decree.

K.B. incurred $6,283.00 in college expenses for the spring semester of 2006. After the trial court entered its dissolution decree, K.B. did not incur any further expenses. She signed up for classes for the fall of 2006, but she eventually withdrew and was not charged. From 2003 to 2006, K.B. incurred approximately $72,000.00 in student loan debt.

On August 23, 2007, Patricia filed a motion for rule to show cause, alleging that Mark had failed to pay his portion of K.B.'s college expenses and asking that he be held in contempt. On April 21, 2008, the trial court held a hearing on Patricia's motion. On May 1, 2008, the trial court issued an order in which it concluded that the language "[K.B.] is currently enrolled in college" in the property settlement agreement "means that the parties assumed responsibility for the expenses [K.B.] was currently incurring at the time of the Property Settlement Agreement." (Appellant's App. p. 4). Finding that K.B. had "prepaid" $6,283.00 in expenses "at the time of (or just days prior to) the execution of the Property Settlement Agreement and entry of the Final Decree" and had not incurred any additional expenses since that time, the trial court ordered Mark to pay $2,471.32 (59% of two-thirds of

$6,283). (Appellant's App. p. 5). Furthermore, because Patricia "has signed a student loan used by [K.B.] to pay the college billing and is paying the monthly payment on that loan," the trial court ordered Mark to pay the money directly to Patricia. (Appellant's App. p. 5). Patricia filed a motion to correct error, which the trial court denied.

Patricia now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Patricia argues that the trial court erred in applying the college expenses provision of the parties' property settlement agreement. Specifically, Patricia contends that the parties intended for the college expenses provision to apply to all of K.B.'s college expenses, from 2003 to 2006, not just the expenses incurred on or after January 24, 2006, the date of the property settlement agreement.

Patricia is asking us to construe the terms of a property settlement agreement. Property settlement agreements in dissolution proceedings are contractual in nature. *Shorter v. Shorter*, 851 N.E.2d 378, 382-83 (Ind. Ct. App. 2006). Construction of the terms of a written contract presents a pure question of law, which we review *de novo*. *Id*. at 283. In interpreting a written contract, we attempt to determine the intent of the parties at the time the contract was made, as evidenced by the language used to express their rights and duties. *Peoples Bank & Trust Co. v. Price*, 714 N.E.2d 712, 717 (Ind. Ct. App. 1999), *trans. denied*. The contract is to be read as a whole when trying to ascertain the intent of the parties. *Id*.

The provision in question provides:

> The parties agree that their minor daughter, [K.B.], is currently enrolled in college. [K.B.] shall be responsible for the first one-third of any college expenses incurred, including tuition, room and board, books, lab fees, supplies,

> and student activity fees associated with her college education. The remaining two-thirds of college expenses incurred shall be satisfied with [Mark] paying 59% thereof and [Patricia] paying 41% thereof.

(Appellant's App. p. 83). Patricia argues that this provision should apply to all of K.B.'s college expenses incurred between 2003 and 2006. Mark contends, and the trial court found, that the provision should apply only to the expenses incurred on or after the date of the property settlement agreement, that is, $6,283.00.[2] We agree with Mark and the trial court.

Construing the college expenses provision to require Patricia and Mark to pay K.B.'s previously-incurred expenses would make no sense: those expenses have already been paid through K.B.'s scholarships and student loans. To the extent that Patricia contends that the parties were agreeing to pay a portion of K.B.'s existing student loans in addition to a portion of her future college expenses, we see two problems. First, student loans are not "college expenses." Student loans are used to *pay* college expenses. The college expenses provision says nothing about the payment of student loans. Second, and more importantly, if Patricia and Mark had considered K.B.'s existing student loans to be their own personal debt, the dollar amount was easily ascertainable and could have been listed in the "Debts" section of Exhibit A to the property settlement agreement, just like the parties' other debts. It was not. (*See* Appellant's App. p. 88). Looking to the property settlement agreement as a whole, as

[2] It is unclear whether K.B. incurred the $6,283.00 in expenses for the spring semester of 2006 before, on, or after January 24, 2006, the date the parties filed their property settlement agreement with the trial court. However, Mark does not challenge his liability for his portion of those expenses, which the trial court found K.B. "prepaid . . . at the time of (or just days prior to) the execution of the Property Settlement Agreement and entry of the Final Decree." (Appellant's App. p. 5). Mark does suggest in his brief that K.B. eventually received a refund for those expenses (he does not tell us why), but he "has accepted the trial court's order and paid the $2,471.32 and intends to make no specific argument that there should not be any judgment." (Appellee's Br. p. 4 n.1).

we must, we conclude that the trial court did not err in applying the college expenses provision.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not err in applying the college expenses provision of the parties' property settlement agreement.

Affirmed.

DARDEN, J., and VAIDIK, J., concur.