

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

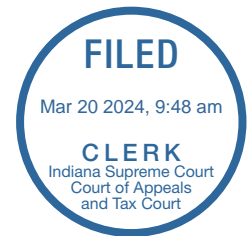


IN THE
Court of Appeals of Indiana

Victoria Bobos Loreda,
Appellant-Petitioner

v.

Fernando Agustin Loreda,
Appellee-Respondent



March 20, 2024

Court of Appeals Case No.
23A-DR-2486

Appeal from the Lake Superior Court
The Honorable Thomas P. Hallett, Judge
The Honorable Shaun T. Olsen, Magistrate

Trial Court Cause No.
45D03-0903-DR-289

Memorandum Decision by Judge Riley

Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Petitioner, Victoria Bobos Loredó (Mother), appeals the trial court's denial of her motion to correct error in which the trial court affirmed its Order, requiring Mother to assume or refinance the mortgage and denying Mother's request to seek contribution from Appellee-Respondent, Fernando Agustín Loredó (Father), for partial payment of a debt.
- [2] We affirm in part and reverse in part.

ISSUES

- [3] Mother presents this court with two issues on appeal, which we restate as:
- (1) Whether the trial court abused its discretion when it enforced the parties' dissolution of marriage decree by establishing a deadline for assuming or refinancing the mortgage, and if failing to meet this deadline, to sell the former marital residence; and
 - (2) Whether the trial court abused its discretion when it determined that Mother could not seek contribution from Father for the payment of a debt.

FACTS AND PROCEDURAL HISTORY

[4] On May 19, 2010, the parties' marriage was dissolved by the trial court's entry of a decree of dissolution. During the final hearing, the parties stipulated, and the trial court awarded Mother all rights, title, and ownership in the marital residence, with Mother to assume the mortgage owed to Countrywide Bank (Countrywide). The dissolution decree also mandated that the parties would each pay one-half of the remaining balance on a second mortgage owed to Mother's parents, Richard and Justine Bobos. This second mortgage was entered into between the parties and the Richard Bobos and Justine Bobos Joint Living Trust (Trust) to secure a debt of \$62, 118.87 against the marital residence on December 15, 2005. Neither party to this appeal provided a copy of any written note or loan agreement, if any exists, that was secured by the second mortgage or established the repayment terms of the debt to the Trust, secured by the second mortgage, or if any interest was due on the same. In addition, the dissolution decree specified that Father was to repay \$5,600 to Mother's parents for educational expenses and he was to hold Mother harmless on this amount.

[5] The parties reconciled and cohabitated for several years after the parties' marriage was dissolved. Mother's parents, through their Trust, waived repayment of the debt allocated in the decree while the parties reconciled. Mother and Father subsequently separated in 2021. On April 21, 2021, Mother filed a motion for rule to show cause, alleging that Father had failed to make any payments as ordered in the divorce decree. On July 23, 2021, Father filed

his verified petition for modification of decree of dissolution because Mother had failed to assume the Countrywide mortgage, as ordered in the decree.

[6] On August 8, 2023, the trial court conducted a hearing on the two pending petitions. During the hearing, it was revealed that Mother's parents had passed away and Mother's sister had been designated as trustee of the Trust. Without opening a separate estate, the trustee had divided the assets pursuant to the provisions of the Trust instrument and dissolved the Trust. Mother testified that the trustee considered her portion of the debt to the Trust satisfied and that the trustee was "not going to go after [Father] directly." (Transcript p. 115). Mother added, "My share is taken care of. My share is done. His share was taken from [my inheritance]." (Tr. p. 117). As a result, Mother asserted that Father owed her his share of the loan based on the legal principle of contribution. On August 21, 2023, the trial court entered its Order Granting Motion to Modify Decree and Granting Motion for Rule to Show Cause in Part, concluding, in pertinent part, that:

20. Mother has not assumed or otherwise refinanced the [Countrywide] mortgage loan as the parties stipulated and ordered by the [c]ourt.

* * * *

23. Mother has not provided a sufficient justification or excuse to explain why she has not assumed or refinanced the [Countrywide] mortgage loan since the parties' temporary reconciliation ended.

24. Father's requested relief to give Mother a deadline to assume or refinance the marital residence or require the marital residence be sold is appropriate.

* * * *

26. Mother's parents, through their [T]rust, excused or waived payment of the debt the [c]ourt allocated in the [d]issolution [d]ecree while the parties reconciled.

27. Mother has failed to prove what she paid, if anything, to her parents' [T]rust to repay any portion of the \$62,118.87 debt by a preponderance of the evidence, prior to their passing.

28. Mother proved by a preponderance of the evidence that:

a) The [t]rustee of the Trust had the authority to collect or otherwise seek to recover the debts owed by the parties referenced in the [d]issolution [d]ecree;

b) Mother compromised the amount she was to receive under her parent's Trust when her last surviving parent passed in the total amount of \$32,000.00 for any amounts remaining owed by her or Father under the [d]issolution [d]ecree, *i.e.*, the remainder of the debt of \$62,118.87 and the educational loan Father owed of \$5,600.00 to Mother's parents; and

c) The Trustee accepted Mother's compromise and administered the Trust accordingly on May 5, 2021.

30. Accordingly, Mother paid at most \$26,400.00 (\$32,000.00 - \$5,600.00 = \$26,400.00) towards the original debt of \$62,118.87.

31. Indiana law generally allows a creditor to enforce joint and several obligations against both or either debtor, and as between the debtors themselves, each is ordinarily liable for one-half.

32. The contribution rule requires that a party seeking contribution “must pay all of the debt or more than her proportionate share thereof.”

33. Mother has not proven that she paid more than half of the debt of \$62,118.87, *i.e.*, \$31,059.44 or more, by a preponderance of the evidence.

34. Mother is not entitled to contribution from Father towards the payments she made for the debt of \$62,118.87.

(Appellant’s App. Vol. II, pp. 41-42) (internal references omitted).

Accordingly, the trial court awarded a judgment against Father in the amount of \$5,600, as repayment of his educational loan, along with prejudgment interest, and ordered Mother to “obtain and assume or otherwise refinance the [Countrywide] mortgage debt related to the marital residence and make a good faith effort to obtain a release of the other party on the debt on the earliest possible date, but no later than December 1, 2023.” (Appellant’s App. Vol. II, p. 42). If Mother failed to refinance the Countrywide mortgage or “obtain a release of Father’s liability” on the mortgage, the trial court ordered the real estate to be listed for sale, “with Mother to retain the net proceeds of the sale.” (Appellant’s App. Vol. II, p. 43).

[7] On September 21, 2023, Mother filed a motion to correct error, contending that the trial court’s mandate for Mother to assume the mortgage amounted to an

impermissible modification of the original divorce decree. With respect to Mother's contention for contribution from Father for the repayment of the loan, Mother claims that the trial court characterized Mother's arrangement with the trustee as a negotiated settlement which she had satisfied for the full \$32,000. Therefore, Mother argued that "[g]iven the [c]ourt's ruling that Father owed Mother \$5,600.00 for the educational expenses, Mother still paid \$26,400 toward the compromised balance and is entitled to reimbursement of 50% of the remaining \$26,400.00 she paid from her share of the Trust, \$13,200.00 of which was her responsibility, and the remaining portion was the responsibility of Father." (Appellant's App. Vol. II, p. 49). The next day, September 22, 2023, the trial court denied Mother's motion, concluding that, notwithstanding the fact that Mother had waived her allegation of error that the trial court could not modify the dissolution decree in this matter by not raising or asserting that the dissolution decree was not subject to modification during the hearing, Mother had "not demonstrated that imposing a deadline for her to assume or refinance the marital residence and requiring the marital residence be sold if she fails to do so is an inappropriate remedy for her breach of her obligations under the [s]ummary [d]issolution [d]ecree." (Appellant's App. Vol. II, p. 51). With respect to Mother's contention for contribution, the trial court concluded that "Mother declined to demonstrate or explain why she is entitled to contribution for payment on the debt to her parents when she has not paid 'all of the debt or more than her proportionate share thereof' as required by Indiana common law." (Appellant's App. Vol. II, p. 52).

[8] Mother now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[9] Our standard of review of a trial court's ruling on a motion to correct error is well settled. We generally review a trial court's ruling on a motion to correct error for an abuse of discretion. *Jocham v. Sutliff*, 26 N.E.3d 82, 85 (Ind. Ct. App. 2015), *trans. denied*. An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *In re Marriage of Dean*, 787 N.E.2d 445, 447 (Ind. Ct. App. 2003), *trans. denied*. However, where the issues raised in the motion are questions of law, the standard of review is *de novo*. *City of Indianapolis v. Hicks*, 932 N.E.2d 227, 230 (Ind. Ct. App. 2010), *trans. denied*.

II. *Assumption of Countrywide Mortgage*

[10] Mother contends that because the trial court entered an Order which formulated new requirements to either refinance and assume the Countrywide mortgage or sell the real estate in the event she was unsuccessful in refinancing the mortgage by December 1, 2023, the trial court impermissibly modified the stipulated provisions of the divorce decree. In response, Father claims that the trial court did not modify the original decree, but merely clarified and enforced its ambiguous terms.

[11] Parties to a dissolution may negotiate their own property settlement agreements and incorporate those into a dissolution decree. *Harris v. Copas*, 165 N.E.3d 611, 619 (Ind. Ct. App. 2021). “Such settlement agreements, if approved by the trial court, are binding contracts which are interpreted according to the same general rules applicable to other types of contracts.” *Id.* (citing *Ryan v. Ryan*, 972 N.E.2d 359, 363-64 (Ind. 2012)). One of those general rules is that, unless the terms of the contract are ambiguous, they will be given their plain and ordinary meaning. *Ryan*, 972 N.E.2d at 364. If the terms of a contract are clear and unambiguous, they are deemed to be conclusive, and we will apply the contract’s provisions without construing them or resorting to extrinsic evidence. *Id.* The fact that the parties disagree regarding the interpretation of the terms of a contract does not render terms ambiguous. *Shorter v. Shorter*, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006). “The disposition of property settled by an agreement . . . 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.” Ind. Code § 31-15-2-17(c). However, as observed by our supreme court, “one party’s assertion that the other is seeking an impermissible modification is frequently met with the contention that only clarification of an agreement or order is sought.” *Ryan*, 972 N.E.2d at 363.

[12] In this court’s recent opinion in *Herber v. Bunting*, 194 N.E.3d 1142, 1144 (Ind. Ct. App. 2022), we analyzed a similar situation in which wife was awarded the marital residence, was ordered to assume the mortgage, and, if wife failed to refinance the marital residence and assume the mortgage, the home was to be

sold. Two years after the entry of the divorce decree, husband moved to enforce the agreement and compel the sale of the marital residence, alleging that wife had failed to refinance the residence. *Id.* The trial court granted husband's motion, awarded husband the right to choose the real estate broker, directed the real estate broker to accept any offer on the residence within five percent of the listing price, and provided details on the distribution of the sale proceeds. *Id.* On appeal, wife contended that the trial court's enforcement order amounted to an impermissible modification of the original divorce decree. *Id.* at 1144-45. We disagreed. *Id.* at 1145. In concluding that the trial court did not modify the agreement but rather "enforced an express provision of the agreement," we acknowledged that "some terms of the enforcement order [we]re not expressly stated in the settlement agreement and were not addressed in testimony at the hearing." *Id.* Determining that these terms were not a modification, we noted that "[w]hen the parties negotiated the terms of the agreement they could have agreed to details about the sale of the marital residence. But since they did not, the trial court properly assumed its role to interpret, consummate, and enforce the parties' intent by ordering specific details to bring about the sale." *Id.*

[13] Similarly, here, in the original divorce decree, the parties agreed to award Mother all rights, title, and ownership in the marital residence, with Mother to assume the Countrywide mortgage on the residence. Eleven years later, after Mother failed to refinance and assume the mortgage, Father sought to enforce the provisions of the original decree. Finding that Mother failed to provide a

sufficient justification or excuse to explain why she had not assumed or refinanced the marital residence, the trial court enforced its original decree by ordering her to assume or refinance the Countrywide mortgage by December 1, 2023, or, if failing that, to sell the marital residence. As in *Herber*, the trial court merely enforced an express provision of the decree by interpreting the terms and effectuating the parties' intent by ordering a specific course of action—a course of action which the parties had omitted to include in the original decree. The trial court did not modify the original grant of the marital residence to Wife but merely clarified the enforcement of that award. Therefore, as the trial court did not impermissibly modify the original decree, its denial of Mother's motion to correct error was not an abuse of discretion.

III. *Contribution*

[14] Next, Mother contends that the trial court abused its discretion when it concluded that Father did not have to contribute to Mother's payment of a marital debt because Mother had not paid "all of the debt or more than her proportionate share thereof" as required by Indiana common law." (Appellant's App. Vol. II, p. 52).

[15] "[C]ontribution involves the partial reimbursement of one who has discharged a common liability.'" *Balvich v. Spicer*, 894 N.E.2d 235, 243 (Ind. Ct. App. 2008) (quoting *Comm'r, Ind. Dep't of Env'tl. Mgmt. v. Bourbon Mini-Mart, Inc.*, 741 N.E.2d 361, 369 n. 7 (Ind. Ct. App. 2000), *rev'd in part on other grounds*, 783 N.E.2d 253 (Ind. 2003)). "Discharge" is defined as "[a]ny method by which a

legal duty is extinguished; esp., the payment of a debt or satisfaction of some other obligation.” Black’s Law Dictionary 495 (8th ed. 2004).

The doctrine of contribution rests on the principle that where parties stand in equal right, equality of burden becomes equity. Moreover, the right of contribution is based upon natural Justice, and it applies to any relation, including that of joint contractors, where equity between the parties is equality of burden, and one of them discharges more than his share of the common obligation.

Balvich, 894 N.E.2d at 245 (internal citations omitted). “The right of contribution operates to make sure those who assume a common burden carry it in equal portions.” *Id.* (quoting *Fleck v. Ragan*, 514 N.E.2d 1287, 1288-89 (Ind. Ct. App. 1987)). As to co-debtors, equity permits one who has paid the debt to recover from the other the portion he should have borne. *Estate of Leinbach v. Leinbach*, 486 N.E.2d 2, 3 (Ind. Ct. App. 1985). In order to be entitled to contribution, however, the claimant “must have first paid the debt or more than her proportionate share thereof.” *Id.* at 5; *see also Konger v. Schillace*, 875 N.E.2d 343, 349 (Ind. Ct. App. 2007).

[16] Here, it is uncontroverted that Mother failed to present any evidence of any payments made toward the original debt of \$62,118.87 debt. However, it is equally undisputed by Father, and the trial court also found, by a preponderance of the evidence, that Mother had re-negotiated the debt owed to the Trust and compromised the debt to be \$32,000 “for any amounts remaining owed by her or Father under the [d]issolution [d]ecree, *i.e.*, the remainder of the

debt of \$62,118.87 and the educational loan Father owed of \$5,600.00 to Mother's parents," and for which Father had to hold Mother harmless. (Appellant's App. Vol. II, p. 42). Accordingly, the trial court concluded that Mother "paid at most \$26,400.00 (\$32,000.00 - \$5,600.00 = \$26,400.00)." (Appellant's App. Vol. II, p. 42).

- [17] Therefore, as the original marital debt owed to the Trust was settled to be \$32,000, of which Mother paid at most \$26,400 through her share of her parents' Trust estate and Father owed \$5,600 in educational expenses, as found by the trial court and undisputed by the parties, Mother discharged more than her proportionate share of \$13,200 of the re-negotiated common burden. Because, as to co-debtors, equity permits one who has paid the debt to recover from the other the portion he should have borne, Mother is entitled to \$13,200 (*i.e.*, \$26,400 : 2) in contribution from Father. *Estate of Leinbach*, 486 N.E.2d at 3. Therefore, we conclude that the trial court abused its discretion by denying Mother's request for contribution, and we reverse the trial court, awarding Mother \$13,200 in contribution from Father.

CONCLUSION

- [18] Based on the foregoing, we hold that the trial court did not abuse its discretion by clarifying and enforcing the provisions of the dissolution decree. But we conclude that the trial court abused its discretion by denying Mother's request for contribution from Father in the amount of \$13,200, in addition to the \$5,600 already owed for educational expenses and which was not disputed before this court.

[19] Affirmed in part and reversed in part.

Brown, J. and Foley, J. concur

ATTORNEY FOR APPELLANT

Kristina L. Garza
Crown Point, Indiana

ATTORNEY FOR APPELLEE

Debra Lynch Dubovich
Levy & Dubovich
Merrillville, Indiana