MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

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IN THE
COURT OF APPEALS OF INDIANA

Thomas Ellison,
Appellant-Petitioner,

v.

Trudi Ellison,
Appellee-Respondent.

October 25, 2022

Court of Appeals Cause No. 22A-DR-858

Appeal from the Lake Circuit Court

The Honorable Marissa McDermott, Judge
The Honorable Lisa A. Berdine, Magistrate

Trial Court Cause No. 45C01-0507-DR-550

Bradford, Chief Judge.

Case Summary

[1] In 2007, Thomas ("Husband") and Trudi ("Wife") Ellison dissolved their marriage. The trial court rendered a $32,500.00 judgment in favor of Wife. Ten years later, the trial court entered an order finding that Husband had accrued a child support arrearage of $44,300.00. In 2020, the trial court entered an agreed order, determining that the "all-inclusive" child support arrearage of $44,300.00 had been satisfied. Shortly thereafter, Wife initiated a proceeding supplemental to collect the original $32,500.00 judgment, which, as it happened, had included $19,500.00 in child support. The trial court found that the $19,500.00 child-support portion of the original $32,500.00 judgment had not been included in the "all-inclusive" support arrearage satisfied in 2020. Husband contends that the trial court erred in two respects: (1) when it found that the child support arrearage of $44,300.00 had not included the child support from the original judgment; and (2) when it modified the original judgment to include post-judgment interest. Because we disagree, we affirm.

Facts and Procedural History

[2] In 2007, Husband and Wife dissolved their marriage. The trial court rendered a $32,500.00 judgment in favor of Wife in its decree of dissolution, which included $19,500.00 for a support arrearage, $10,000.00 in lost home equity, $3000.00 for the 401(k) Husband had liquidated, $1000.00 for a tax refund, and $1700.00 from the closing of the sale of the parties' real estate. In May of 2011, Husband's obligation to pay child support ceased when the children were adopted.

[3] On February 21, 2017, the trial court issued an order recognizing that Husband had accrued a child support arrearage of $44,340.00 for the period from the 2007 dissolution until his and Wife's children had been adopted in 2011. On March 17, 2020, the trial court entered an agreed order on arrears in which it found that, as of February 4, 2020, Father's "all-inclusive child support arrearage […] of […] $44,300.00" had been satisfied. Appellant's App. Vol. II p. 26.

[4] In April of 2020, Wife moved to collect the original $32,500.00 judgment. Husband objected, claiming that the child-support portion of that judgment had been satisfied. On February 16, 2022, the trial court conducted a hearing on Wife's motion. Wife alleged that the agreed order on arrears had not forgiven or considered the prior child support amount of $19,500.00 from the original judgment; however, Husband argued that that sum had been forgiven because the agreed order on arrears had included language that stated that the child support arrearage of $44,340.00 was "all-inclusive." Appellant's App. Vol. II p. 26.

[5] After that hearing, the trial court issued an order in which it concluded that Husband still owed Wife the original $32,500.00 judgment, including the $19,500.00 support arrearage, and statutory post-judgment interest of eight percent accruing since the original judgment had been entered in 2007. Husband raises three issues on appeal, which we restate as the following two: (1) whether the trial court erred when it concluded that Husband still owes Wife $19,500.00 in support arrearages as part of the original 2007 dissolution order,

and (2) whether the trial court impermissibly modified the original dissolution decree and judgment by adding post-judgment interest.

Discussion and Decision

I. Child Support Arrearage

[6] As an initial matter, we note that Wife has not filed an Appellee's Brief. When an appellee fails to file a brief, "we do not undertake the burden of developing arguments for her, and we apply a less stringent standard of review with respect to showings of reversible error." *Zoller v. Zoller*, 858 N.E.2d 124, 126 (Ind. Ct. App. 2006) (citing *Murfitt v. Murfitt*, 809 N.E.2d 332, 333 (Ind. Ct. App. 2004)). In other words, we may reverse if the appellant establishes *prima facie* error. *Id*. *Prima facie* error means "an error at first sight, on first appearance, or on the face of it." *Murfitt*, 809 N.E.2d at 333.

[7] "Proceedings supplemental are a continuation of the underlying claim on the merits—not an independent action." *Lewis v. Rex Metal Craft, Inc.*, 831 N.E.2d 812, 817 (Ind. Ct. App. 2005) (citing *Koors v. Great Sw. Fire Ins. Co.*, 538 N.E.2d 259, 260 (Ind. Ct. App. 1989)). Because the underlying action here concerns a child-support order, we will reverse the trial court's decision "only if it is clearly erroneous or contrary to law." *Young v. Young*, 891 N.E.2d 1045, 1047 (Ind. 2008) (citing Ind. Trial Rule 52(A); *McGinley-Ellis v. Ellis*, 638 N.E.2d 1249 (Ind. 1994)). "A decision is clearly erroneous if it is clearly against the logic and effect of the facts and circumstances that were before the trial court." *Id*. (citing *McGinley-Ellis*, 638 N.E.2d at 1252). Put differently, in family-law matters "[w]e give due regard to the trial court's ability to assess the credibility of

witnesses and will not reweigh the evidence, and we must consider only the evidence most favorable to the judgment along with all reasonable inferences drawn in favor of the judgment." *Clary-Ghosh v. Ghosh*, 26 N.E.3d 986, 990 (Ind. Ct. App. 2015) (citing *Stone v. Stone*, 991 N.E.2d 992, 998 (Ind. Ct. App. 2013)), *trans. denied*.

[8] Here, Husband contends that the trial court erred when it concluded that he still owed $19,500.00 in child support to Wife as part of the original judgment against him. Specifically, Husband argues that the $19,500.00 child support arrearage from the original judgment was included in the agreed order on arrears, which found that the "all-inclusive" child support arrearage of $44,340.00 had been satisfied. Appellant's Br. pp. 14–15. To make that argument, Husband relies on the "four corners" rule. Appellant's Br. p. 17. That rule states that "where no ambiguity is present the trial court" is limited to the four corners of the document and cannot rely on parol evidence. *Adams v. Reinaker*, 808 N.E.2d 192, 195–96 (Ind. Ct. App. 2004) (citing *Clark v. CSX Transp., Inc.*, 737 N.E.2d 752, 757 (Ind. Ct. App. 2000)). Absent such ambiguity, words are given their plain and ordinary meaning. *Bailey v. Mann*, 895 N.E.2d 1215, 1217 (Ind. 2018). Here, however, we agree with the trial court that the agreed order on arrears is unambiguous, which means that we do not need to address the question of parol evidence.

[9] The trial court determined that the "all-inclusive" amount of $44,340.00 in the agreed order on arrears does not include the original $35,200.00 judgment or any portion of it, and we agree. To get straight to the point, the agreed order on

arrears mentions *only* the February 21, 2017, order without reference of any kind to the 2007 judgment. Appellant's App. Vol. II pp. 26–27. Moreover, the February 21, 2017, order itself simply provides that Husband's obligation to support the children after the dissolution ceased in May of 2011 and explains that, as of January 23, 2017, Husband had a child support arrearage of $44,340.00, again without any reference to the 2007 judgment. Without any reference to the original judgment, we, like the trial court, conclude that the agreed order on arrears unambiguously refers only to the child-support arrearage recognized in the February 21, 2017, order.

II. Post-Judgement Interest

[10] Next, Husband contends that the trial court erred when it modified the original judgment rendered in the dissolution decree by imposing post-judgment interest when the original decree did not specify whether post-judgment interest applied.

[11] Specifically, Husband argues that *Rovai v. Rovai*, 912 N.E.2d 374 (Ind. 2009) means that the post-judgment interest statute does not apply to the original $32,500.00 judgment unless the trial court invoked it specifically. In *Rovai*, the Indiana Supreme Court held that "the statute on civil post-judgment interest does not compel that interest run on the various internal elements of dissolution decrees. Rather, the dissolution statutes confer upon trial courts the authority to order interest or not in the course of fashioning a just and reasonable division of property." *Id*. at 376. Thus, Husband argues that for the original judgment

to accrue interest, the judgment itself must state that it accrues post-judgment interest. We disagree.

[12] Like the trial court, we find that *Zoller*, 858 N.E.2d at 124, controls this issue. To start, Indiana Code section 24-4.6-1-101 states that "[e]xcept otherwise provided by statute, interest on judgments for money whenever rendered shall be from the date of the return of the verdict or finding of the court until satisfaction at: … [a]n annual rate of eight percent (8%) if there was no contract by the parties." Importantly, *Zoller* notes that

> [w]hen the property in a marital estate is divided, the amount one spouse is ordered to pay the other is a money judgment. [*Williamson v. Rutana,* 736 N.E.2d 1247, 1247 (Ind. Ct. App. 2000)]. Money judgments, including sums ordered to be paid in a dissolution decree, accrue interest from the date the judgment becomes presently due. *Van Riper v. Keim,* 437 N.E.2d 130 (Ind. Ct. App. 1982). When the sum ordered to be paid from one spouse to the other in a dissolution decree is immediately payable, the judgment accrues interest from the date the judgment is entered. *Williamson v. Rutana,* 736 N.E.2d 1247. This is so even when the dissolution decree does not expressly provide for the payment of interest. *Id.*

Id. at 126. Like the dissolution decree in *Zoller*, the dissolution decree in this case did not specify that the $32,500.00 judgment was to be paid upon a triggering event or in installments, while the judgment in *Rovai* was not to be paid *until* the happening of certain triggering events. *Id*. at 375. Therefore, the judgment here was immediately due and payable upon entry of the trial court's

order, at which point the judgment began accruing interest automatically pursuant to Indiana Code section 24-4.6-1-101.

[13] In resisting post-judgment interest, Husband contends that *Zoller* pre-dates *Rovai*, and thus *Rovai* should control. Put simply, *Rovai* holds that trial courts, when considering dissolution matters, have discretion regarding whether to impose post-judgment interest when dividing a marital estate. *Rovai*, 912 N.E.2d at 376. However, *Rovai* does not address, much less abrogate, *Zoller*'s holding that interest accrues on judgments immediately payable "even when the dissolution decree does not expressly provide for the payment of interest." *Zoller*, 858 N.E.2d at 126.

[14] Additionally, Husband correctly claims that Indiana Code section 31-15-7-9.1 bars the modification of dissolution decrees in the absence of fraud. However, the trial court's order on proceedings supplemental does not modify the original decree of dissolution to include post-judgment interest. Instead, the trial court's order simply points out that, in accordance with *Zoller*, the original judgment of $32,500.00 became due and payable immediately upon its entry, and thus began to accrue interest automatically. As a result, we cannot say that the trial court's determination that the original judgment included interest is clearly erroneous.

[15] We affirm the decision of the trial court.

Pyle, J., and Weissmann, J., concur.