MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Caitilin Ashley,
Appellant-Petitioner,

v.

Richard F. Ashley, Jr.,
Appellee-Respondent

December 7, 2023

Court of Appeals Case No. 23A-DR-667

Appeal from the Marion Superior Court

The Honorable Melanie L. Kendrick, Special Judge

Trial Court Cause No. 49D09-1510-DR-35333

Memorandum Decision by Judge Mathias
Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] Caitilin Ashley's ("Wife") and Richard F. Ashley, Jr.'s ("Husband") marriage was dissolved in the Marion Superior Court. Several disputes have arisen post-

dissolution related to properties the parties jointly owned or continue to own. The parties agreed to arbitrate their disputes concerning the proceeds of the sale of one marital property. Arbitration proceedings ensued and the trial court accepted the Arbitrator's findings of fact and conclusions of law, entering them as the court's judgment. Wife appeals, raising three issues, which we restate as:

> I. Whether the Arbitrator's findings of fact and conclusions of law were timely filed with the trial court;
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> II. Whether the Arbitrator exceeded the scope of her authority in her consideration of the issues presented for arbitration; and,
>
> III. Whether the Arbitrator erred when she declined to award Wife lost opportunity costs and ordered each party to pay their own attorney's fees.

[2] We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Facts and Procedural History

[3] In 2016, Husband and Wife divorced after thirty years of marriage. During their marriage, they accumulated several real estate properties. The dissolution court adopted the parties' mediated settlement agreement, which contained provisions addressing the eventual sale of the properties and distribution of the sale proceeds. The parties also agreed to be bound by the Family Law Arbitration Act and to submit any disputes to an arbitrator.

[4] In 2017, the parties amended the settlement agreement and agreed that Husband would receive the parties' real estate located at 3920 Washington Boulevard (3920 Washington or 3920) as his sole property and Wife would

receive her equity in that property totaling $138,000. The parties also agreed that Husband would pay Wife her equity share when the parties' real estate located at 3755 Washington Boulevard (3755 West Washington or 3755) sold. And Husband also agreed to pay Wife's attorney fees totaling $1,200.

[5] The parties were unable to sell the property at 3755 Washington and disagreements arose between them concerning the upkeep of the property and continued attempts to sell it. Ultimately, the parties filed contempt petitions against each other. The trial court found Wife in contempt and ordered her to pay Husband's attorney fees. Our court reversed the trial court after concluding that the contempt finding was not supported by the evidence. *See Ashley v. Ashley*, 132 N.E.3d 919, 2019 WL 3820027 *5 (Ind. Ct. App. August 15, 2019) ("*Ashley I*").

[6] In January 2019, the parties entered into an agreement to sell 3755 Washington to a third-party buyer. The proceeds from the sale totaled $474,822.80. The Parties were unable to agree how the proceeds from the sale would be distributed. At closing, the parties each received a partial distribution of $50,000 and the remaining $374,822.20 was placed in escrow. Wife did not immediately receive her full equity in the 3920 Washington as the parties had agreed in 2017. However, roughly three months later, in April 2019, Wife received a partial payment of her equity for 3920 Washington in the amount of $89,200.

[7] The parties continued to disagree concerning which party was responsible for amounts owed for mortgage and tax payments and other expenses on the

remaining properties they still owned, and, therefore, they could not agree how the remaining balance in the 3755 Washington escrow account totaling $285,622.81 should be distributed. On June 25, 2020, Wife filed a motion to arbitrate their dispute pursuant to the terms of their settlement agreement. The trial court ordered the parties to arbitration and the parties agreed that Katherine Harmon would serve as the arbitrator. At the hearing, the parties disputed which expenses incurred in maintaining the properties and other marital expenses should be deducted "off the top" of the proceeds remaining in escrow before dividing the remaining funds equally between the parties.

[8] After Harmon conducted a hearing on September 23 and the parties filed their proposed orders on October 7, Harmon submitted the arbitration order to the trial court on November 6 (the "Initial Order"). As we later explained:

> The Initial Order appeared to resolve the parties' disputes before the Arbitrator, and, among other things, it ordered Husband to pay to Wife approximately $32,000 in damages and $55,000 in attorney's fees. Three days after the Arbitrator submitted the Initial Order, on November 9, 2020, the court entered the Initial Order as its judgment.
>
> Husband filed a timely notice of appeal from the trial court's entry of the Initial Order in our case number 20A-DR-2228. In December, Husband filed with the trial court a motion to stay the execution and enforcement of the Initial Order pending appeal.
>
> One day after Husband filed his motion to stay, the Arbitrator filed a written and signed notice with the trial court stating as follows:
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> > Arbitrator . . . notifies the Court that the incorrect Arbitrator's Order was inadvertently submitted [as the

> Initial Order] . . . . Arbitrator was unaware the erroneous Order had been filed until she saw [Husband's] Motion to Stay . . . , and Arbitrator immediately notified Counsel of the error.

("the Arbitrator's Notice" or "Notice"). Attached to the Arbitrator's Notice was an "Amended Arbitrator's Order" ("the Amended Order"). The Amended Order provided for a payment to Husband in a net amount of about $59,000 and had no provision for either party to pay the other's attorney's fees. Amended Order at 14.2.

In light of the Arbitrator's Notice and the Amended Order, after various filings in our Court and in the trial court, we dismissed Husband's appeal without prejudice and remanded jurisdiction to the trial court. In doing so, we specifically instructed the trial court "to issue an order or orders regarding the arbitration award." Appellant's App. Vol. 2, p. 164.

Husband moved for relief from judgment in the trial court in relevant part under Indiana Trial Rule 60(A), asserting that the Arbitrator's submission of an incorrect document as the judgment was a clerical error. The trial court held a hearing Husband's motion in February 2021. Following that hearing, the court concluded in relevant part as follows:

> On December 9, 2020, the [A]rbitrator notified the Court that she made an error in the submission of the [Initial Order] that the Court entered on November 9, 2020. On December 17, 2020, [Husband] moved for relief from judgment citing this error pursuant to Ind. Trial Rule 60(A) . . . . Furthermore, the Court also has the authority to exercise its own initiative to correct court orders, clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight and omission. At a minimum, the [A]rbitrator's error falls into this latter category.

> The court directed that the Initial Order be set aside and that the Amended Order be entered as the judgment of the court.
>
> Thereafter, Wife filed a motion to correct error. In her motion, Wife argued in relevant part that the Act did not authorize the court to substitute the Amended Order for the Initial Order. Wife also asserted that the substitution of the two Orders was a substantive change to the judgment that was outside the scope of relief under Trial Rule 60. And Wife argued that there was no admissible evidence in support of the court's adoption of the Amended Order because the Arbitrator herself did not testify at the hearing on remand. Accordingly, Wife asked the trial court to set aside the Amended Order and to reinstate the Initial Order as the judgment of the court.
>
> After another hearing, the trial court, relying mainly on the purported lack of evidence in support of its judgment under Trial Rule 60, granted Wife's motion to correct error. In doing so, the court set aside the Amended Order and reinstated the Initial Order as the judgment of the court.

Ashley v. Ashley, 190 N.E.3d 353, 355-56 (Ind. Ct. App. 2022), *trans. denied* (record citations and footnotes omitted) ("*Ashley II*").

[9] Husband appealed the trial court's order granting Wife's motion to correct error. Our court agreed with Husband that the trial court's order granting his Trial Rule 60(A) motion was correct:

> The Arbitrator was akin to a judge in resolving the parties' disputes, and her mistake—the submission of the wrong document for entry of judgment—was not a mistake resulting from the exercise of her judicial function and cannot be reasonably attributed to the exercise of judicial consideration or discretion. It was, rather, a clearly demonstrable mechanical error, not an error in substance. As the trial court aptly put it

> when it granted Husband's motion under Trial Rule 60(A), the Arbitrator's mistake arose out of "oversight and omission."

Id. at 357 (record citation and citations to T.R.60(A) omitted). We also rejected Wife's arguments that the Amended Order did not comply with the Family Law Arbitration Act, and that the trial court's order granting Husband's Trial Rule 60(A) motion was erroneous because the Amended Order was a change in substance to the trial court's final judgment. *Id.* at 358-59. We therefore remanded the case to the trial court with instructions to reinstate its order granting Husband's Trial Rule 60(A) motion and reinstating the Amended Order as the judgment of the court.[1] *Id.* at 359.

[10] After Wife's petition to transfer was denied, the trial court reinstated the Amended Order on February 23, 2023. The Amended Order awarded Husband $61,354.35 and Wife $2,857.58 in "off the top" deductions from the 3755 escrow balance of $285,622.81. The Amended Order individually listed each "off the top" deduction and the party the deduction was awarded to. The Arbitrator split the remaining $211,410.88 equally between Husband and Wife. The Arbitrator ordered each party to pay their own attorney fees, and she declined to award opportunity costs.

[1] Wife's petition for rehearing was denied on July 6, 2022, and her petition for transfer was denied on December 8, 2022.

[11] Wife now appeals the Amended Order. Additional facts will be provided as necessary.

Standard of Review

[12] Consistent with the Act, *see* Ind. Code § 34-57-5-7, the Arbitrator made findings of fact and conclusions of law, which were then entered as a judgment by the trial court. On appeal, we will not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court or family-law arbitrator to judge the credibility of the witnesses. *See Masters v. Masters*, 43 N.E.3d 570, 575 (Ind. 2015). In reviewing findings of fact and conclusions of law, an appellate court applies a two-tiered standard of review by first determining whether the evidence supports the findings and then whether the findings support the judgment. *Id.*

Timeliness of the Amended Order

[13] As she did in *Ashley II*, Wife continues to challenge the timeliness of the Amended Order and argues that it does not comply with the Family Law Arbitration Act. Wife claims that the trial court committed "reversible error when it accepted the Amended Arbitration Award as the order of the court . . . ." Appellant's Br. at 16. In *Ashley II*, our court instructed the trial court to reinstate "the Amended Order as a judgment of the court." 190 N.E.3d at 359. In doing so, we considered and rejected Wife's arguments that the Amended Order was untimely under the Act and that the Act allowed an

arbitration award to be modified only under circumstances not present in this case. *Id.* at 358.

[14] Wife's continued challenges to our *Ashley II* decision are barred by the law of the case doctrine. "The law of the case doctrine provides that an appellate court's determination of a legal issue binds both the trial court and the appellate court in any subsequent appeal involving the same case and substantially the same facts." *Dutchmen Mfg., Inc. v. Reynolds*, 891 N.E.2d 1074, 1082 (Ind. Ct. App. 2008), *trans. denied*. This minimizes unnecessary relitigation of legal issues once they have been resolved by an appellate court. *Id*. Therefore, "all issues decided directly or by implication in a prior decision are binding in all further portions of the same case." *Keesling v. T.E.K. Partners, LLC*, 881 N.E.2d 1025, 1029 (Ind. Ct. App. 2008).

[15] In both her Appellant's and Reply briefs, the crux of Wife's argument is that our court incorrectly decided *Ashley II*. Under the law of the case doctrine, our prior decision is binding on Wife, and we will not revisit our decision in this appeal.[2]

[2] Wife presented additional arguments in her reply brief that she did not raise in either her Appellant's brief or to the trial court. She has therefore waived those arguments and we will not consider them in this appeal. *See, e.g.*, *Cavern v. Zaberdac*, 849 N.E.2d 526, 533 (Ind. 2006); Ind. Appellate Rule 46(A)(8)(a), (C).

The Arbitrator's Scope of Authority

[16] Next, Wife argues that the Arbitrator exceeded the scope of her authority by deducting "off the top" of the proceeds from the sale of 3755 Washington costs and expenses that were not the subject of the arbitration and that the Arbitrator incorrectly calculated certain costs and expenses. The Family Law Arbitration Act allows a broad range of matters to be submitted to arbitration. *Brockmann v. Brockmann*, 938 N.E.2d 831, 835 (Ind. Ct. App. 2010) (citing Ind. Code § 34-57-5-2(a)), *trans. denied*. "However, parties are only bound to arbitrate those issues that by clear language they have agreed to arbitrate, and arbitration agreements will not be extended by construction or implication to cover any other matters." *Id*. at 834.

[17] In their settlement agreement, the parties agreed "to submit to binding arbitration the issue of whether or not Husband is entitled to any credit for the mortgage payments made after the date of dissolution" on the properties being sold pursuant to the agreement. Appellant's App. Vol. 2, p. 77. They also agreed that "the arbitration shall consider the use and benefit to the parties of all real property (including 3755 Washington Blvd) owned by the parties in making this determination." *Id*. The parties anticipated that disputes might arise concerning each parties' share of expenses incurred to maintain the properties until each property was sold and they agreed that those disputes would be submitted to arbitration. *Id.* at 78. Finally, the parties agreed to arbitrate "[w]hether and/or how any of the disputed expenses or payments described [in

the settlement agreement] should be divided and/or paid between the parties[.]" *Id*. at 85.

[18] On July 21, 2020, the trial court issued an order listing the parties' motions that would be addressed at arbitration. These included Wife's motion to receive $139,200, her equity in the 3920 Washington property, from the proceeds of the sale of the 3755 Washington property. Next, Husband's motion to hold Wife in contempt for receiving rents from the parties' Clear Lake property before that property was transferred to Wife's sole ownership. Third, Wife's motion for a determination of amounts owed under the mediated marital settlement agreement, which Wife listed as the following issues:

> a. The amount of money still owed by Father in satisfaction of his obligation to pay Mother the sum of $139,200.00 as Mother's share of equity in 3920 Washington Blvd, pursuant to paragraph 4 of the Agreed Entry Of Modification.
>
> b. The amount of money owed for all reimbursements for taxes paid for taxable years 2015, 2016, 2017 and 2018.
>
> c. The amount of money Father has paid to Brett Brewer and the amount of money Mother owes Father in reimbursement thereof;
>
> d. Claims by Father that Mother owes him rent in the amount of $779.00 per month for the months of January and February 2018 for 67 Clear Lake, Indianapolis, IN 46074;
>
> e. Claims by Father that Mother owes him legal fees he incurred for the minor child;
>
> f. The amount of money that has not been transferred by Father to Mother in satisfaction of Father's obligation to transfer the Merrill Lynch ROTH IRA XX7L81 to Mother.

> g. An amount and manner of an escrow mechanism to handle the payment of the $4,400.00 balance owed for the child's medical bills that has most likely changed since October 3, 2016;
>
> h. What amounts should be paid to each party "off the top" or before the equal division of the net sales proceeds for 3755 Washington Blvd., Indianapolis, IN;
>
> i. What amounts should be reimbursed by Father to Mother as a deduction from Father's equal division of the net sales proceeds for 3755 Washington Blvd., Indianapolis, IN;
>
> j. What amounts should be reimbursed by Mother to Father as a deduction from Mother's equal division of the net sales proceeds for 3755 Washington Blvd., Indianapolis, IN;
>
> k. Any other reimbursement claims by either party that are currently due and owing.

Id. at 118. And, finally, the court ordered the parties to arbitration to address issues concerning the listing for another parcel of real estate at 3650 Washington Boulevard.

[19] These issues were precisely the issues addressed by the Arbitrator in the Amended Order. Wife simultaneously argues that the Arbitrator exceeded her authority when she considered issues related to the Clear Lake property and property taxes owed by the parties but then cites to evidence and argument that she presented to the Arbitrator concerning those issues. *See* Appellant's Br. at 21-25. Moreover, under the terms of the parties' Settlement Agreement and Modified Agreed Entry, the Arbitrator was required to consider matters related to the parties' other real estate so that she could determine how the proceeds from the sale of 3755 Washington should be divided between the parties.

I. Off the Top Deductions for Mortgage and Property Tax Payments

[20] The Settlement Agreement provided that, when each marital property is sold,

> the proceeds shall first be used to satisfy and/or reimburse (a) the balance on the mortgage(s) for the property being sold; (b) all mandatory costs of sale, including but not limited to all broker or realtor fees, except as otherwise agreed herein; (c) credits due to Husband for tax payments made; (d) all payments for maintenance, improvements, remediations or other sale-related expenditures upon which the parties agreed in writing prior to incurring the expenses; for maintenance expenses upon which the parties agree in writing after written objection was made pursuant to Paragraph 15 herein. Any proceeds remaining shall be used to pay any bill due to Bret Brewer; then if any proceeds remain they shall be used to pay the outstanding medical bills in the approximate amount of $4,400 for the parties' child; then if any proceeds remain to pay the tax indebtedness of the parties for 2015. Thereafter the proceeds of the sales shall be divided between the parties equally. To the extent either party prepays an obligation set forth above, he or she shall receive credit from sales proceeds.

Appellant's App. Vol. 2, pp. 76-77. The parties agreed that Husband would continue to make mortgage and property tax payments for the parties' properties. The Agreement further provided:

> Husband shall be reimbursed for all property tax payments made after the approval of this agreement from the proceeds of the sale of one or more of the properties. The parties agree to submit to binding arbitration the issue of whether or not Husband is entitled to any credit for the mortgage payments made after the date of dissolution. The parties agree the arbitrator shall consider the use and benefit to the parties of all real property (including 3755 Washington Blvd) owned by the parties in making this determination.

Id. at 77.

[21] As required by the agreement, the Arbitrator considered the "use and benefit to the parties of all real property" in making her determination that Husband's reimbursement for mortgage payments made post-dissolution should not be reduced by Husband's use of the property or Wife's lost use and benefit of the property.[3] *See Id*. at 63, 77. Wife was unable to utilize the property but she also did not bear any of the expense of owning the property. Wife's argument that she should receive a credit for her lost use and benefit for 3755 Washington is simply a request to reweigh the evidence and the credibility of the witnesses, which we will not do.

[22] The parties also agreed that Husband would be "reimbursed for all property tax payments made after the approval of this agreement from the proceeds of the sale of one or more properties." *Id*. at 77. Wife argues that Husband's payment of property taxes for properties other than 3755 Washington were not subject to arbitration despite this clear and unambiguous language in their Agreement. Wife also inexplicably argues that the property tax payments are "off the top expenses" that should have been reimbursed equally between the parties even though Husband was solely responsible for making those payments. Appellant's Br. at 22. Contrary to Wife's argument, the Arbitrator correctly credited

[3] The Arbitrator also concluded that Husband incurred other expenses for the parties' properties such as utility bills and property insurance. The Arbitrator declined to award reimbursement of these expenses to Husband because the parties did not address division of those expenses in the Settlement Agreement. Appellant's App. Vol. 2, pp. 62-63.

Husband with those tax payments and deducted them "off the top" of the 3755 Washington proceeds.

II. The Clear Lake Property Rents

[23] Wife also argues that Husband should not have been credited for certain rent payments "off the top" of the sale proceeds because Clear Lake is not identified as a "Parties' Property" in the Settlement Agreement. However, Husband proved that Wife improperly intercepted rent payments he should have received under the parties' Settlement Agreement because he paid the mortgage on the Clear Lake property through April 2019. This was identified as an issue to be arbitrated, *See* Appellant's App. Vol. 2 p. 118, and Wife has not established any error in the Arbitrator's award of Clear Lake rent payments to Husband.[4]

III. The Child's Medical Bills

[24] Next, Wife argues that the Arbitrator erred when she valued their child's outstanding medical bills. Wife notes that the Settlement Agreement provides that "if any proceeds remain they shall be used to pay the outstanding medical bills in the approximate amount of $4,400 for the parties' child." *Id*. at 76. But Wife ignores the word "approximate" and the evidence presented to the Arbitrator established that Wife only owed $1,658.58 for their child's medical

[4] Wife also argues that Husband received more rent than he paid on the mortgage. But the Arbitrator credited Husband for the Clear Lake mortgage payments "less rent received." Appellant's App. Vol. 2, p. 63. Wife has not presented any compelling argument that the Arbitrator's calculation was in error.

bills. Accordingly, the Arbitrator did not err when she valued the parties' child's medical bills.

IV. The Parties' 2015 Tax Debt

[25] Wife next argues that the "Arbitrator was incorrect in not including the 2015 tax indebtedness as the Marital Settlement Agreement Section 16 clearly states regarding this specific item that the 2015 tax indebtedness is to be paid off the top from property sales proceeds." Appellant's Br. at 23. The Arbitrator made the following findings concerning the parties' tax indebtedness.

> 45. Husband objects to the inclu[sion] of the 2015 tax indebtedness of the Parties arguing that paragraph 33 of the [Marital Settlement Agreement] is inconsistent with paragraph 16 . . . . Paragraph 33 reads:
>
> > 33. Federal and Indiana Income Tax Returns. Each party shall file his or her 2015 state and/or federal income tax return(s) as married filing separately. If either party already filed as married filing jointly, s/he shall file an amended return within 90 days of the Court's approval of this Agreement. Each party shall be solely responsible for any liability arising from his or her own income tax return(s) and shall be solely entitled to receive and own any refund arising from his or her own income tax return(s).
>
> 46. The provisions of Section 16 state that the 2015 tax indebtedness of the parties was to be shared equally from the proceeds of the sale of the "Parties[']] Properties." Section 33 states that each shall file their own tax returns and shall be solely responsibility [sic] for any liability arising from his or her own return. Those terms are contradictory. As a result, this Arbitrator

> is tasked with determining how the 2015 tax indebtedness shall be addressed.
>
> 47. The Arbitrator hereby finds that each party should have been responsible for paying their own 2015 tax liabilities.
>
> 48. Per Husband's testimony, he voluntarily paid a portion of Wife's tax liability to keep her out of foreclosure. Husband was not required to make this payment to Wife. He thus shall not be entitled to receive reimbursement for the same.

Appellant's App. Vol. 2, p. 62.

[26] The Arbitrator correctly concluded that the parties' Settlement Agreement contains contradictory terms concerning payment of the parties' 2015 tax indebtedness. Moreover, Husband presented evidence that Wife incurred significant taxes in 2015 because she removed money from her IRA, without Husband's knowledge, to purchase her College Avenue home. That property was awarded solely to Wife and Husband voluntarily paid nearly $15,000 of Wife's 2015 tax debt to help her keep the property. For all of these reasons, Wife has not presented compelling argument to support her claim that the Arbitrator erred when she made each party responsible for their respective 2015 tax debts.

V. The Arbitrator Miscalculated Her Distribution of the Proceeds from the Sale of 3755 Washington Boulevard

[27] The distribution of the proceeds from the sale of 3755 Washington was complicated because the parties' marital estate consisted of numerous parcels of

real estate that they jointly owned and continued to maintain after the marriage was dissolved in 2016. And, as noted above, the parties' 2016 Settlement Agreement provided that the parties would be reimbursed for certain expenses incurred in maintaining those properties until they sold. The parties agreed to equally split any remaining proceeds from the sale of the marital properties. In this case, only the equity remaining from two of the parties' marital properties is involved in the arbitrator's distribution of the escrowed funds.

[28] In 2017, the parties agreed that Husband would retain 3920 Washington as his sole and separate property. In exchange, Wife was awarded $138,000 as her share of the equity in that property. They also agreed that Husband would pay Wife's attorney fees in the amount of $1,200. Importantly, the parties agreed that Wife would receive $139,200 from Husband's share of the proceeds from the eventual sale of 3755 Washington.

[29] In 2019, 3755 Washington sold and the proceeds from that sale totaled $474,822.80, and divided equally, each party was entitled to $237,411.40. The Arbitrator found that the post-dissolution expenses incurred by the parties and certain tax indebtedness totaled $64,211.93. Of those expenses, Husband was entitled to reimbursement for $61,354.35 and Wife was entitled to be reimbursement totaling $2,857.87. Also, as noted above, Husband had agreed to pay Wife $139,200 out of his share of the 3755 Washington proceeds in exchange for keeping 3920 Washington as his sole asset.

[30] The confusion in calculating each parties' remaining share of the proceeds appears to lie in the fact that both parties received a $50,000 distribution at the 3755 Washington closing and Wife received a later, but pre-arbitration, $89,200 distribution as partial payment for her equity in 3920 Washington.

[31] The arbitrator failed to award to Wife an equal share of the proceeds from the 3755 Washington property because the arbitrator subtracted Wife's $50,000 and $89,200 distributions from the proceeds of 3755 Washington *before* she divided the remaining proceeds between the parties. Wife's $139,200 should have been subtracted from Husband's proceeds as the parties agreed in the 2017 Agreed Modification. *See* Appellant's App. Vol. 2 p. 55 (The [2017] "Agreed Entry" transfers the $139,200 to Wife from Husband's share of the proceeds of 3755 Washington Blvd.").

[32] For illustrative purposes, we have included the following calculation to demonstrate the correct distribution of 3920 Washington and the 3755 Washington sale proceeds.

Husband	**Wife**
$237,411.40 ½ Equity in 3755 Washington	$237,411.40 ½ Equity in 3755 Washington
+$61,354.35 Husband's expenses	-$61,354.35 Husband's expenses
-$2857.87 Wife's expenses	+$2857.87 Wife's expenses
-$89,200 Wife's partial equity in 3920 Washington	+$89,200 Wife's partial equity in 3920 Washington
=$206,707.88	=$268,114.92
-$50,000 distribution at 3755 closing	-$50,000 distribution at 3755 closing
-$50,000 remaining 3920 equity to Wife	+$50,000 remaining 3920 equity

	-$89,200 Equity for 3920 received pre-arbitration
=$106,707.88 to Husband	**=$178,914.92 to Wife**

[33] In sum, from the remaining escrow balance totaling $285,622.81, Husband is entitled to $106,707.88 and Wife is entitled to $178,914.93.[5] We remand this case to the trial court with instructions to correct the Amended Order accordingly.

Wife's Claims Concerning Issues the Arbitrator Allegedly Failed to Resolve

[34] Finally, Wife claims that the Arbitrator failed to resolve issues raised during arbitration including increased closing costs and lost rent for the Clear Lake property and failure of the Arbitrator to account for Husband's misconduct that resulted in increased attorney fees to Wife.

I. Closing and Opportunity Costs Related to the Clear Lake Property

[35] The Parties' Settlement Agreement provided that after the 3755 Washington property was sold, Wife was to use the proceeds of the sale of that property to pay off the mortgage on the 67 Clear Lake property. Wife claims she incurred additional expenses when she was unable to pay off the mortgage for the Clear

[5] Since the Escrow Balance is an odd number, the proceeds cannot be divided with precision. With a flip of the coin, Wife's share has been increased by one cent.

Lake property because Husband delayed distribution of the proceeds from the 3755 Washington property and that she suffered lost opportunity costs.

[36] The parties could not agree how the proceeds from the sale of the 3755 Washington property should be distributed after it sold in January 2019. Therefore, each party received a partial distribution of $50,000 and the remaining $374,822.20 was placed in escrow. In April 2019, Wife received an additional $89,200 from the sum in escrow, for a total of $139,200.

[37] In April 2019, Husband provided Wife with a quitclaim deed for the Clear Lake property but Wife did not transfer the property to herself as the sole owner. Husband provided a second quitclaim deed in 2020 and Wife eventually transferred ownership of the property to herself in April 2020. Wife was responsible for the delay in transferring ownership of the Clear Lake property and the Arbitrator found that both parties were at fault for the delay in distributing the proceeds from the sale of 3755 Washington. Appellant's App. Vol. 2, p. 60. It was within the Arbitrator's discretion to make this determination and we will not disturb her finding on appeal.

[38] In addition, the issue of lost opportunity costs was not specifically pleaded in any of the parties' motions that the trial court set for arbitration. Once again, we observe that Husband presented evidence that Wife was at least partially responsible for the delay in transferring ownership of the Clear Lake property and in distributing the proceedings from the sale of 3755 Washington. Wife's

arguments to the contrary are simply requests to reweigh the evidence, which our court will not do.

II. Attorney Fees

[39] Wife argues that her attorney fees "were well in excess of what would be expected for a simple presentation and division of property and were the result of Husband interfering with the execution" of the Parties' Settlement Agreement. Appellant's Br. at 28. And because Husband "continually delayed and obfuscated every attempt to resolve these matters[.]" the Arbitrator should have awarded her attorney fees. *Id*.

[40] As provided under the terms of the Parties' Settlement Agreement, the Arbitrator ordered each party to pay their own attorney fees. But the agreement also provided that if "either party shall default in the performance of any of the obligations of this agreement, or of any order of judgment, the other party may be entitled to recover" reasonable attorney fees and costs "for any and all action reasonably necessary to enforce the provisions of" their Settlement Agreement. Appellant's App. Vol. 2, p. 87.

[41] Wife generally asserts that Husband hindered the execution of the Settlement Agreement but does not direct us to evidence she presented to the Arbitrator that would establish that she incurred additional attorney fees because Husband failed to perform his obligations under the Settlement Agreement. Both parties' conduct contributed to the need for continued litigation and arbitration. For all

of these reasons, we conclude that the Arbitrator did not err when it ordered each party to pay their own attorney fees.

Conclusion

[42] Wife's continued challenges to the timeliness of the Amended Arbitration Order are barred by the law of the case doctrine. With one exception, we are not persuaded by the arguments Wife raised in this appeal. We do agree with Wife that the Arbitrator miscalculated the division of the proceeds from the sale of 3755 Washington. Therefore, we remand this case to the trial court to correct its judgment accordingly.

[43] Affirmed in part, reversed in part and remanded for proceedings consistent with this opinion.

Vaidik, J., and Pyle, J., concur.