

The marriage of Horace Franks (“Husband”) and Cheryl A. Rush f/k/a Cheryl A. Franks (“Wife”) was dissolved in Elkhart Circuit Court. Husband appeals the trial court’s finding of contempt for failure to comply with the terms of the property settlement agreement (“Agreement”). We conclude that Husband has failed to establish that the trial court abused its discretion with regard to the court’s use of its contempt power in enforcing the Property Settlement agreement, and therefore we affirm.

Facts and Procedural History

On June 23, 2003, Husband’s and Wife’s marriage was dissolved in Elkhart Circuit Court but the settlement of property issues was held over. On September 5, 2003, the parties appeared in open court and informed the trial court of their proposed property settlement agreement. The trial court approved the agreement and ordered the parties to comply with the agreement. On February 6, 2004, the parties submitted a written agreement to the trial court and the trial court approved that property settlement agreement (“Agreement”). The relevant part of the Agreement orders Husband to “take responsibility” for the home equity loan (“Loan”) which was taken out on the marital residence and to “be responsible for” the Chase credit card debt (“Credit Card”) which were attributable to his business. Appellant’s App. pp. 13-14. On March 16, 2004, Wife filed a Motion for Rule to Show Cause that the trial court denied. The trial court determined that Husband was not in contempt of the court’s order because Husband was current on the payments for both debts and the Agreement does not provide a specific date by which these debts need to be paid or refinanced out of Wife’s name.

In 2005, Wife approached Husband about refinancing the Loan or obtaining a release of the lien on the marital residence so she could sell the property. Husband agreed to sell other properties he owned so he could refinance or pay off the Loan. However, he failed to do so and eventually told wife that he couldn't "do anything about it now[.]" Tr. p. 55.

On February 22, 2006, Wife entered into a purchase agreement with John Williams that required Wife to deliver clear title to the residence. Appellant's App. p. 20. On September 25, 2006, Wife filed a Verified Showing of Non-compliance and Petition for Citation for Contempt of Court. The trial court reviewed evidence on January 10, 2007, and issued a Contempt Citation Order on January 16, 2007. The trial court based its decision on the change of circumstances, specifically Wife's ability to sell the residence. Husband filed a Motion to Correct Error on February 15, 2007, which was subsequently denied. Husband now appeals.

Discussion and Decision

Husband argues that the trial court's finding of contempt was an abuse of discretion. When reviewing the trial court's finding of contempt, we will reverse where an abuse of discretion has been shown, which occurs only when the trial court's decision is against the logic and effect of the facts and circumstances before it. Mitchell v. Mitchell, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003). When we review a contempt order, we neither reweigh the evidence nor judge the credibility of the witnesses. Id.

The trial court held Husband in contempt for failing to take responsibility for the Loan and the Credit Card as required by the parties' Agreement within a reasonable time.

Husband argues that the Agreement does not contain any provisions requiring him to pay the debts within a certain period of time; therefore, the trial court in effect modified the parties' Agreement by finding that Husband was in contempt for failing to pay those debts.

The relevant language of the Agreement is:

(1) Division of Assets and Liabilities:

(c) [. . .] that [Husband] will take responsibility for the home equity loan taken out on the marital residence which was used primarily for business purposes.”

(g) Liabilities: The Parties agree that they will be responsible for all debts related to the real property which each is obtaining as a result of this agreement. [Husband] shall be responsible for payment of the balance on the Chase Platinum credit card [. . .] which was maintained in the name of both Parties, but used for business purposes. [. . .] [Husband] will also take responsibility for the home equity loan taken out on the marital residence which was also used primarily for business purposes.

Appellant's App. pp. 13-14 (emphasis added).

When Husband and Wife dissolved their marriage, they were free to draft their own settlement agreement. Shorter v. Shorter, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006). “Such agreements are contractual in nature and become binding upon the parties when the dissolution court merges and incorporates that agreement into the divorce decree.” Id.; See also White v. White, 819 N.E.2d 68 (Ind. Ct. App. 2004). The interpretation of a property settlement agreement is a question of law and we review those questions de novo. Id.

The trial court's conclusion that, in effect, Husband was required to pay the marital debts within a reasonable time is not a modification of the Agreement, but rather

it is an accurate statement of law. The Agreement is a contract and when a contract does not fix a time for the performance of contractual obligations, the law presumes a reasonable time. See Harrison v. Thomas, 761 N.E.2d 816, 819 (Ind. 2002). The trial court did not modify the Agreement regarding the time for performance; rather it sought to interpret and enforce the Agreement as written. Fackler v. Powell, 839 N.E.2d 165, 167-168 (Ind. 2005).

The determination of “what constitutes a reasonable time depends on the subject matter of the contract, the circumstances attending performance of the contract and the situation of the parties of the contract.” Harrison, 761 N.E.2d at 819. The subject matter of this contract is the settlement of property issues related to the dissolution of marriage. The purpose of the Agreement is to provide a “full settlement of all property rights” as between Husband and Wife. Appellant’s App. p. 11. When Wife filed her Motion for Rule to Show Cause one month after the Agreement came into effect, the trial court determined that in effect one month was an unreasonable amount of time for Husband to comply with his duties with regard to the Loan and the Credit Card.

Wife’s second motion, the Verified Showing of Non-compliance, was filed nearly three years after the trial court accepted the Agreement. More than two years is certainly enough time to liquidate assets or take other actions which would enable Husband to “take responsibility” for the debts and to remove Wife from a position of responsibility for those debts.

Moreover, the trial court determined that since the time of its June 2, 2004 Order; the parties’ circumstances had changed. Because Husband failed to take full

responsibility for the Loan and Credit Card, Wife was unable to sell the residence because of the debts that remained in her name and the lien that remained on the residence despite the presence of a buyer and a signed purchase agreement.

Under these facts and circumstances, we conclude that the more than two years since the acceptance of the Agreement by the trial court is a reasonable period of time for Husband to assume full responsibility for the debts and to remove Wife from responsibility for the Loan and the Credit Card. Husband failed to “take responsibility” for the debts within a reasonable time, and therefore, the court did not abuse its discretion when it held Husband in contempt for failing to comply with the Agreement.

Affirmed.

NAJAM, J., and BRADFORD, J., concur.