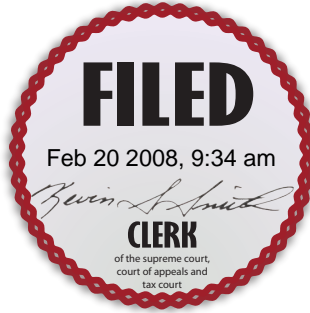


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

DONALD E.C. LEICHT
Leicht Law Office
Kokomo, Indiana

KATHERINE J. NOEL
Noel & Sullivan
Kokomo, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

STEPHANIE BAILEY,
Appellant-Defendant,

vs.

LEWIS MANN,
Appellee-Plaintiff.

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No. 34A04-0709-CV-506

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0703-DR-295

February 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Stephanie Bailey appeals the trial court's interpretation of language in the property settlement agreement incorporated into the order dissolving her marriage to Lewis Mann.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On March 15, 2007, Bailey filed a verified petition for dissolution. The same day an executed property settlement agreement was filed. That agreement provided, in relevant part:

5. Property Awarded to [Bailey]. Except as herein specifically provided otherwise, [Bailey] shall take as her separate assets all property, both real and personal, tangible and intangible, that she owned prior to marriage, including but not limited to the residence at [address deleted], Kokomo, Indiana 46901 (subject to the mortgage thereon), **the Pontiac G-6 (subject to the lease thereon)**, together with all personal property in her possession and accounts with financial institutions existing in her name alone. **In addition to the joint debt (lease) on the Pontiac G-6, [Bailey] shall pay all debts in her name only.**

6. Property awarded to [Mann]. [Mann] shall take as his separate assets his love seat and two chairs, television, dining room table and chairs, antique end table, his bed in the spare bedroom, two dressers, his books, his old files and pictures, the dishes in the Rubbermaid tub, the gas grill, and the Jeep, together with his personal property in this possession and accounts with financial institutions existing in his name alone. **[Mann] shall pay all debts in his name only.** [Mann] is to make mutually acceptable arrangements to remove his personal property from [deleted address] within fourteen (14) days of his executing this Property Settlement Agreement.

* * * * *

10. Indemnity and Implementation. Each of the parties agrees to: (A) assume and pay as due any indebtedness (1) which he or she incurred prior

¹ Bailey also asserts the trial court should have ordered Mann to pay her attorney fees. However, Bailey did not provide a standard of review for that issue, inform us of the controlling law, or include any citation to authority. Accordingly she waived this issue for appeal. *See* Ind. Appellate Rule 46(A)(8) (argument requires citation to authority); *Carter v. Indianapolis Power & Light Co.*, 837 N.E.2d 509, 514 (Ind. Ct. App. 2005) (issue waived for appeal where party failed to cite the record or authority to support its argument), *reh'g denied, trans. denied* 860 N.E.2d 586 (Ind. 2006). Nevertheless, because we affirm the court's order for Bailey to remove Mann's name from the lease of her car, we cannot say the court abused its discretion when it declined Bailey's request for attorney fees.

to the date of filing, but which was not assigned above and/or (2) which he or she incurred after the date of filing, **(B) indemnify and save harmless the other as to those obligations assumed hereunder, and (C) promptly execute such documents as may be reasonably required to give full force and effect to the terms and spirit of this Agreement.** Any property not specifically awarded to one of the parties in this Agreement shall be the property of the party in whose possession it was located on the date of execution of this Agreement. This Agreement shall be merged in the decree of dissolution and the Court will reserve jurisdiction to enforce the terms hereof by contempt proceedings, if necessary.

(Appellant's App. at 8-9) (emphases added). The court incorporated that agreement into its final order.

On June 19, 2007, Mann filed a motion to show cause because Bailey had not modified the lease agreement with GMAC to place the Pontiac G-6 in her name alone. In response, Bailey filed a motion for attorney fees alleging Mann's motion was frivolous, groundless, and without cause. The court held a hearing on the motions, found the agreement susceptible to two different interpretations, and held Bailey was to remove Mann's name from the lease. The court declined to find Bailey in contempt and ordered each party to pay his or her own attorney fees. Bailey filed a motion to correct error, which the trial court denied.

DISCUSSION AND DECISION

We review a trial court's decision on a motion to correct error for an abuse of discretion. *Simon Prop. Group, L.P. v. Mich. Sporting Goods Distrib., Inc.*, 837 N.E.2d 1058, 1067 (Ind. Ct. App. 2005), *trans. denied* 855 N.E.2d 1003 (Ind. 2006). "An abuse of discretion has occurred if the trial court's decision is clearly against the logic and effect of the facts and circumstances, or the reasonable inferences therefrom, that were

before the court, or if the court has misapplied the law.” *Id.*

Divorcing parties are permitted to draft their own settlement agreements. *Shorter v. Shorter*, 851 N.E.2d 378, 383 (Ind. Ct. App. 2006). Settlement agreements are contractual and, once incorporated into the trial court’s final order, become binding on the parties. *Id.* The dissolution court that adopted the agreement is “in the best position to resolve questions of interpretation and enforcement of that agreement and thus retain jurisdiction to interpret the terms of their property settlement agreements and to enforce them.” *Id.* Nevertheless, because we are reviewing the construction of the terms of a written contract, which is a pure question of law, our standard of review is *de novo*. *Id.*

To interpret binding “agreements, we apply the general rules applicable to the construction of contracts.” *Id.*

[U]nless the terms of the contract are ambiguous, they will be given their plain and ordinary meaning. Clear and unambiguous terms in the contract are deemed conclusive, and when they are present we will not construe the contract or look to extrinsic evidence, but will merely apply the contractual provisions. Terms are not ambiguous merely because the parties disagree as to the proper interpretation of those terms.

Id. Rather, an ambiguity arises when an agreement is “susceptible to more than one reasonable interpretation.” *Id.* When a contract is ambiguous, we may consider all relevant evidence to determine the meaning of the provisions. *Id.* As with all contract interpretation, our ultimate goal is give effect to the intent of the parties. *Id.*

Bailey asserts the trial court erred when it ordered her to “refinance” the lease of the Pontiac G-6. (Appellant’s Br. at 2.) We agree the Agreement was ambiguous regarding whether Bailey was to “refinance” the car. However, the language of the

Agreement as a whole makes it apparent Bailey needed to remove Mann's name from the lease to "give full force and effect to the terms and spirit of this Agreement." (*Id.* at 9.)

The Agreement referred to the joint lease in its identification of the car as an asset that was awarded to Bailey individually. It also provided Bailey would pay, in addition to all debts in her name only, the "joint debt (lease)" on the car. (*Id.* at 8.) While the Agreement gave her the car and the joint debt, the "spirit" of the Agreement was that the asset and the debt would become hers alone – just as all other assets and debts were assigned to one party or the other. As a practical matter, the only way this joint asset could become Bailey's individual asset was for her to remove Mann's name from the lease. Accordingly, the trial court did not err in ordering Bailey to remove Mann's name from the car lease.

Affirmed.

RILEY, J., concurring.

KIRSCH, J., dissenting with separate opinion.

**IN THE
COURT OF APPEALS OF INDIANA**

STEPHANIE BAILEY,)	
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Appellant-Petitioner,)	
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vs.)	No. 34A04-0709-CV-506
)	
LEWIS MANN,)	
)	
Appellee-Respondent.)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen Jessup, Special Judge
Cause No. 34D02-0703-DR-295

KIRSCH, Judge, dissenting.

I respectfully dissent.

While my colleagues conclude that the parties’ settlement agreement “as a whole makes it apparent [Wife] needed to remove [Husband’s] name from the lease to ‘give full force and effect to the terms and spirit of’” the agreement, to me, it is not at all apparent. Divorce settlement agreements and divorce decrees are entered every day that do not require one party to remove the other party from a joint obligation. That is because it is often onerous to do so. Typically, creditors will not release a joint debtor from an obligation without consideration. Automobile leases are particularly difficult to

renegotiate. Here, wife may lose the benefit of favorable capitalization and interest rates and may incur early termination and other charges to remove husband's name from the lease. Parties obligated on conditional sales contracts may incur Rule of 78 problems. Were this a real estate mortgage, the problems may be even more onerous with significant interest rate changes and closing costs. In the extreme case, a party may be forced to sell property to which he or she is entitled.

Here, there is no indication that Wife entered into the settlement agreement with the expectation that such charges necessary to remove Husband's name from the joint obligation would be incurred. By adding the requirement now the trial court added a provision to which Wife did not agree.

Husband was free to negotiate a provision in the settlement agreement that Wife would remove his name from any joint obligation assumed by Wife. He did not do so. Rather than give effect to the parties' settlement agreement, the trial court re-wrote the agreement by adding a provision that the parties did not provide for. In doing so, the trial court abused its discretion. I would reverse the trial court's order.