

**IN THE INDIANA COURT OF APPEALS
CAUSE NO. 20A-DR-00423**

VALERIE PADILLA (WATTS),)	
Appellant,)	Appeal from the Jackson Superior Court No. 2
)	
vs.)	Trial Court Cause No.: 36D02-1203-DR-119
)	
)	The Honorable Bruce A. MacTavish, Judge
DONALD WATTS,)	
Appellee.)	

APPELLEE’S BRIEF

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ISSUES PRESENTED FOR REVIEW

- I. Whether Appellant Forfeited the Right to Appeal the Issue Presented when Appellant's Appeal of the Issue is Untimely?
- II. Whether the Trial Court Erred by Enforcing the Parties' Property Settlement Agreement when Appellant Had Failed to Fulfill Her Contractual Obligations for Seven (7) Years?
- III. Whether Appellant was Denied Due Process of Law when the Trial Court Ordered the Marital Home to be Auctioned After Appellant Failed to Fulfill her Contractual Obligations Pursuant to the Parties' Settlement Agreement?

STATEMENT OF THE CASE

I. Nature of the Case.

The nature of this case relates to Appellant's appeal of the trial court's orders of January 22, 2020 and February 10, 2020 enforcing the Parties' 2012 mediated settlement agreement by requiring Appellant auction the marital home. Appellee's App. Vol. II, pp. 15-16.

II. Course of Proceedings.

On or about May 16, 2012, Appellant, Valerie Watts ("Wife") and Appellee, Donald Watts, ("Husband") entered into a Mediated Settlement Agreement ("Settlement Agreement"). Appellee's App. Vol. II, pp. 19-20. The trial court issued its Decree of Dissolution on or about July 2, 2012, and thereby incorporated the Parties' Settlement Agreement into the Decree. Appellee's App. Vol. II, pp. 21.

The Settlement Agreement provided, in relevant part, that Wife would be entitled to the property located at 810 West 2nd Street, Seymour, Indiana (the "Marital Home"). Appellee's App. Vol. II, pp. 19-20. However, Wife's entitlement to the Marital Home was conditioned upon her paying all mortgages, taxes, insurance, and utilities, while also holding Husband harmless therefrom. Appellee's App. Vol. II, pp. 19-20. Moreover, Wife was required to refinance the mortgage debt on the Marital Home in her sole name. Appellee's App. Vol. II, pp. 19-20.

Approximately one (1) year later, on or about June 10, 2013, Husband filed his Petition for Contempt and Affidavit in Support of Rule to Show Cause ("First Contempt"). Appellee's App. Vol. II, pp. 22. Husband's First Contempt was based upon Wife's failure to maintain mortgage payments on the marital home or refinance the Marital Home, both violations of the Parties' Settlement Agreement. Appellee's App. Vol. II, pp. 22-23. The trial court issued a Rule to Show cause to Wife on or about June 11, 2013. Appellee's App. Vol. II, pp. 26. A hearing was held on

or about July 29, 2013. Appellee's App. Vol. II, pp. 4. Following said hearing, the trial court, on or about August 12, 2013, issued its Order on Rule to Show Cause, specifically directing:

“That the Respondent shall have 60 days to refinance the property at 810 West Second Street, Seymour, Indiana and to remove the Petitioner's name from any loan associated therewith.” Appellee's App. Vol. II, pp. 27.

After Wife failed to comply with the trial court's order, on or about November 26, 2013, Husband filed another Petition for Contempt and Affidavit in Support of Rule to Show Cause (“Second Contempt”). Appellee's App. Vol. II, pp. 29-31. Again, the trial court issued a Rule to Show Cause against Wife on or about December 2, 2013. Appellee's App. Vol. II, pp. 32. Wife then filed four (4) Motions to Continue, all of which were granted except the final. Appellee's App. Vol. II, pp. 3-5. After a hearing was finally held on or about April 17, 2014, the trial court issued a new order, again directing Wife to “refinance the property located at 810 W. Second St. within sixty (60) days of this Order.” Appellee's App. Vol. II, pp. 33.

Wife failed to comply with the trial court's directive and terms of the Settlement Agreement, and as such, on or about May 14, 2018, Husband again filed a Petition for Contempt and Affidavit in Support of Rule to Show Cause (“Third Contempt”). Appellee's App. Vol. II, pp. 34-37. The trial court, again, issued a Rule to Show Cause to Wife on or about May 14, 2018. Appellee's App. Vol. II, pp. 38. A hearing was held on or about February 4, 2019, and the case was continued generally with the understanding that Wife would put the Marital Home up for sale to resolve her failure to perform contractual duties. Appellee's App. Vol. II, pp. 10.

Wife, however, did not sell the Marital Home, nor refinance same, and on or about June 21, 2019, Husband filed his Request for Hearing. Appellee's App. Vol. II, pp. 41. A hearing was held on August 15, 2019, and the Court ordered Wife to sell the Marital Home within sixty (60) days to fulfill her contractual obligations. Appellee's App. Vol. II, pp. 46. However, Wife failed

to comply, and subsequently took the Marital Home off of the market and ceased making mortgage payments on same. Appellee's App. Vol. II, pp. 47.

Husband was, again, forced to file a Petition for Contempt and Affidavit in Support of Rule to Show Cause ("Fourth Contempt") on or about September 23, 2019. Appellee's App. Vol. II, pp. 49-52. The trial court, on or about September 24, 2019 issued another Rule to Show Cause to Wife and set a hearing for October 10, 2019. Appellee's App. Vol. II, pp. 11.

The trial court held a hearing on Husband's Fourth Contempt on or about October 10, 2019, and thereby instructed Wife to, again, sell the Marital Home. Appellee's App. Vol. II, pp. 53. Furthermore, at the October 10, 2019 hearing, the trial court instructed the Parties that if an auction needs to be set in order to accomplish the goal of selling the Marital Home, the court would do same. Tr. Vol. II, pp. 8. On or about November 6, 2019, the trial court, upon its own motion, set a review hearing for December 16, 2019. Appellee's App. Vol. II, pp. 54.

The trial court subsequently held a hearing on December 16, 2019. Appellee's App. Vol. II, pp. 12. Following the hearing, on or about December 18, 2019, the trial court issued an Order directing Wife to sell the Marital Property within thirty (30) days, or the trial court reserved "the right to select the realtor to handle the sale or to order the property auctioned off." Appellee's App. Vol. II, pp. 55.

III. Disposition of the Issue.

After Wife failed to sell the Marital Home within thirty (30) days, Husband, on or about January 20, 2020, filed his Motion for Court Order to Auction Marital Residence. Appellee's App. Vol. II, pp. 56-58. On or about January 22, 2020, the trial court issued an Order granting Husband's request to auction the Marital Home, and gave the Parties seven (7) days to agree to an auctioneer. Appellee's App. Vol. II, pp. 15. Husband filed his Notice of Petitioner's Selection of

Brief of Appellee, Donald Watts

Auctioneer and Request for Court Order of Auction on or about January 30, 2020. Appellee's App. Vol. II, pp. 59. Wife did not file a selection of an auctioneer, but instead requested a continuance on the date such a selection was to be made. Appellee's App. Vol. II, pp. 13.

On or about February 10, 2020, the trial court issued its Order on Auctioneer, thereby selecting an auctioneer to sell the Marital Home. Appellee's App. Vol. II, pp. 16. The trial court's order did not grant Husband any of the proceeds from the auction of the Marital Home. Appellee's App. Vol. II, pp. 16. Appellant Appealed.

STATEMENT OF THE FACTS

Husband and Wife were married on or about April 29, 2006. Appellee's App. Vol. II, pp. 17. The Parties separated in October of 2011. Appellee's App. Vol. II, pp. 17. There were no children of the marriage. Appellee's App. Vol. II, pp. 17. On or about March 29, 2012, Husband filed his Verified Petition for Dissolution of Marriage. Appellee's App. Vol. II, pp. 17.

On or about May 2, 2012, the trial court ordered the Parties to mediation. Appellee's App. Vol. II, pp. 3. The Parties were able to reach an agreement during mediation, and the Settlement Agreement was filed with the court on or about May 16, 2012, with same being incorporated into the Decree of Dissolution. Appellee's App. Vol. II, pp. 3, 21. The Settlement Agreement provided, in pertinent part, that:

“The parties own certain tract of real estate, which has common address of 810 West 2nd Street, Seymour, Indiana. The legal description of said real estate is incorporated by reference herein. As of the date of the decree, the real estate shall become the sole and individual property of wife. Husband will execute and deliver to wife a Quitclaim Deed, subject to all encumbrances, including mortgages and real estate taxes. Wife will pay all mortgages, taxes, insurance and utilities and hold husband harmless therefrom. Wife shall refinance the mortgage debt on said real estate in to her sole name at her earliest possible opportunity” Appellee's App. Vol. II, pp. 19-20.

Wife failed to perform her obligations under the Settlement Agreement, and approximately one (1) year later, Husband filed his First Contempt. Appellee's App. Vol. II, pp. 22-25. As Husband detailed in his First Contempt, Wife had failed to refinance the Marital Home as required in the Settlement Agreement. *Id.* More importantly, Wife had failed to maintain the mortgage payments, and because Husband's name was still on the mortgage, Husband's credit was adversely affected. *Id.*

Despite the trial court's order mandating Wife refinance the Marital Home within sixty (60) days, Wife failed to do same. Appellee's App. Vol. II, pp. 29-31. Instead, Wife decided to put

the Marital Home up for sale. *Id.* Almost a year went by, and Wife failed to refinance or sell the Marital Home. Appellee's App. Vol. II, pp. 33.

After another hearing was held in April of 2014, the trial court again ordered Wife to refinance the Marital Home within sixty (60) days. *Id.* The trial court further ordered that Wife have her father co-sign on the refinancing so that Husband's name would finally be removed from the promissory note and mortgage upon the Marital Home. *Id.*

Wife failed to fulfill her contractual obligations found in the Settlement Agreement, and ignored the Orders of the trial court directing Wife to refinance the Marital Home for several years following the trial court's April 25, 2014 Order. Appellee's App. Vol. II, pp. 34-37. As such, Husband was forced to file his Fourth Contempt on or about June 14, 2018. Appellee's App. Vol. II, pp. 34-37. Following the filing of the Fourth Contempt, Wife relayed to Husband that she would remedy her failure and had taken action to resolve the issue of contempt by selling the marital residence. Appellee's App. Vol. II, pp. 39.

Relying on Wife's assurances, Husband filed a Motion to Continue the hearing on Rule to Show Cause to allow Wife time to resolve the issue. Appellee's App. Vol. II, pp. 39. However, Wife did not, in fact, cure her failure to perform her contractual duties, and on or about November 2, 2018, Husband was forced to Request a Hearing on the issue of Wife's contempt. Appellee's App. Vol. II, pp. 41-42. After a hearing was held on or about February 4, 2019, the case was continued generally based upon the assumption that Wife was selling the marital home. Tr. Vol. II, pp. 4-6.

Once again, however, Wife failed to comply. Appellee's App. Vol. II, pp. 43-45. Husband was, again, forced to request a hearing, indicating to the trial court that Wife was not acting in

good faith, and that Wife had actually threatened a real estate agent contracted to perform a Market Analysis on the Marital Home. Appellee's App. Vol. II, pp. 43-45.

After many more months of Wife failing to comply with court orders and fulfill her contractual duties under the Settlement Agreement, the trial court, at the October 10, 2019 hearing, informed the Parties that if an auction needs to be set in order to accomplish the goal of selling the Marital Home, the court would do same. Tr. Vol. II, pp. 8. Wife, however, did not follow the trial court orders nor fulfill her contractual obligations, and on or about December 18, 2019, the trial court ordered the Marital Home sold within thirty (30) days "or the Court reserves the right to select the realtor to handle the sale or to order the property auctioned off." Appellee's App. Vol. II, pp. 55.

Wife did not appeal this December 18, 2019 Order, but instead, appealed the trial court's order of January 22, 2020 and February 10, 2020. Appellee's App. Vol. II, pp. 13.

Additional facts are provided in briefing as necessary.

SUMMARY OF THE ARGUMENT

In this matter, Appellant argues that the trial court improperly modified the Parties' Settlement Agreement when the trial court Ordered the Marital Home to be auctioned on or about January 22, 2020. However, before even addressing the merits of Appellant's argument, Appellant forfeited her right to appeal the trial court's authority to auction the marital home because Appellant's appeal is untimely. First, Appellant was the one that agreed to sell the Marital Home, and as such, should not be allowed to appeal the trial court's enforcement of the remedy Appellant proposed. Second, as Appellant recognized in Appellant's Brief, the trial court, on or about December 18, 2019, issued an order reserving the right to auction the Marital Home if Appellant failed to sale the Marital Home within thirty (30) days.

Thus, if Appellant wished to challenge the trial court authority to auction the Marital Home, Appellant was required to either: (1) file a motion to correct errors within thirty (30) days of the December 18, 2019 Order; or (2) file an appeal of the December 18, 2019 Order within thirty (30) days. Appellant did neither. Precedent dictates that timely filing of a notice of appeal is a jurisdictional prerequisite, and failure to conform to the applicable time limits results in forfeiture of an appeal. As such, because Appellant did not timely appeal the December 18, 2019 Order, Appellant has waived her challenge to the trial court ordering an auction of the Marital Home.

Waiver notwithstanding, the trial court's action of ordering the Marital Home to be auctioned is not an improper modification of the Parties' Settlement Agreement, but instead, constitutes a valid use of the trial court's power to enforce a Settlement Agreement. Indiana Code 31-15-7-10 grants trial courts the continuing authority to enforce awards contained in a dissolution decree. In this matter, the trial court used its authority granted pursuant to Indiana Code section 31-15-7-10.

Appellant had approximately seven (7) years to comply with the terms of the Settlement Agreement, but failed to do so. As such, the trial court took actions that would enforce compliance with the contractual obligations Appellant undertook pursuant to the Settlement Agreement. Nothing in the trial court's orders auctioning the property affects the ownership of property divided pursuant to the Settlement Agreement. Appellee is not entitled to any of the proceeds, nor was the property transferred to Appellee. Instead, it is the only remedy the trial court could fashion after seven (7) years to achieve the goal of removing Appellee's name from the mortgage and promissory note attached to the Marital Home. Thus, because the trial court's order did not transfer ownership of property, it was not a modification of the Settlement Agreement.

Finally, Appellant was not denied due process when the trial court, after Appellant failed to fulfill her contractual obligations for seven (7) years, ordered the Marital Home to be auction. Appellant had every opportunity to fulfill her obligations, but failed to do so. Appellant was put on notice that the trial court would auction the Marital Home if Appellant failed to comply. Thus, Appellant received sufficient notice and was not denied due process.

ARGUMENT

I. Appellant Forfeited the Right to Appeal the Issue Presented because Appellant's Appeal of the Issue is Untimely.

Appellant argues that the trial court's order to auction the Marital Home is an improper modification of the Settlement Agreement. Appellant's Br. p. 9. It is not a modification. Instead, it is a proper enforcement of the Parties' Settlement Agreement because it did not "transfer ownership" of the Marital Home, or any proceeds generated from the sale, from Wife to Husband. *See Phillips v. Delks*, 880 N.E.2d 713, 721 (Ind. Ct. App. 2008).

Propriety of the trial court's actions notwithstanding; Wife waived the issues raised for appellate review. First, Wife was the one that agreed to sell the Marital Home in order to fulfill her contractual obligations as early as August of 2018. Appellee's App. Vol. II, pp. 39. Wife, again, informed the trial court that she would be selling the Marital Home to fulfill the contractual obligations under the Settlement Agreement at the February 4, 2019 hearing. Tr. Vol. II, pp. 4-6. Thus, the fact that the trial court ordered the Marital Home to be auctioned does not negate the fact that it was Wife that proposed selling the Marital Home. The mechanism in which the Marital Home is sold does not make it a "modification." Wife should not be allowed to agree to a certain remedy, and then when the trial court orders such remedy, appeal the trial court's decision.

Second, as Wife correctly notes, on or about December 18, 2019, the trial court ordered Appellant to sell the marital residence within thirty (30) days. Appellant's Br. p. 4. Further, as Appellant notes, the trial court reserved "the right to select the realtor to handle the sale **or to order the property auctioned off.**" *Id.* (emphasis added). Thus, to the extent that Wife challenges the trial court's ability to order an auction of the Marital Home, Wife was required to challenge the December 18, 2019 Order, the Order which informed the Parties that such action may be taken. Appellee's Br. Vol. II, pp. 55.

As this Court has made clear, “[t]he Indiana Rules of Appellate Procedure require that a party must initiate an appeal by filing a Notice of Appeal with the appellate court clerk within thirty days after entry of a final judgment.” *Hedrick v. Gilbert*, 17 N.E.3d 321, 325 (Ind. Ct. App. 2014). Moreover, “[t]he timely filing of a notice of appeal is a jurisdictional prerequisite, and failure to conform to the applicable time limits results in forfeiture of an appeal.” *Id.* That is, “[a] failure to file a timely motion to correct error or notice of appeal results in waiver.” *Dillman v. State*, 16 N.E.3d 445, 447 (Ind. Ct. App. 2014).

The trial court, by at least the December 18, 2019 Order¹, put the Parties on notice that the Marital Home would be auctioned if Wife failed to comply. Appellee’s App. Vol. II, pp. 55. If Wife believed the trial court was prohibited from taking such enforcement action, Wife should have filed a Motion to Correct Error or Notice of Appeal within thirty (30) days of the December 18, 2019. Ind. Appellate Rule 9(A)(1); Ind. Tr. Rule 59. Wife took neither of the available actions. Appellee’s Br. Vol. II, pp. 2-14.

In summary, as this Court has pointed out that the “purpose of the appellate rules is to facilitate the orderly presentation and disposition of appeals,” and the failure to timely file a notice of appeal does “not serve the interests of orderly and speedy resolution.” *Blinn v. Dyer*, 19 N.E.3d 821, 822 (Ind. App. 2014). Wife agreed to sell the Marital Home as a remedy to fulfill her contractual obligations as early as August of 2018, and again at the hearing on February 4, 2019. Wife should not be allowed to appeal the trial court’s decision to use the remedy that Wife proposed. Moreover, because Wife did not timely appeal the December 18, 2019 Order, nor file a Motion to Correct Error, Wife has forfeited her right to challenge to the trial court ordering an

¹ The Parties were made aware that the Marital Home would be auctioned if Wife failed to comply before this Order. *See* Hearing of October 10, 2019, Tr. Vol. II, pp. 8. However, it is unclear exactly how early the Parties were put on notice of the possibility of an auction. Nonetheless, Wife was made aware by at least December 18, 2019.

auction of the Marital Home. Ind. Appellate Rule 9(A)(5). This Court should affirm the trial court's orders of January 22, 2020 and February 10, 2020 auctioning the Marital Home.

II. The Trial Court Did Not Err in Enforcing a Provision of the Parties' Property Settlement Agreement that Wife Had Failed to Comply with For Seven (7) Years.

Assuming, *arguendo*, that Wife did timely file her appeal, Husband will address the arguments of Appellant in turn.

A. Standard of Review.

Settlement agreements “are contractual in nature and, once incorporated into the trial court's final order, become binding on the parties.” *Whittaker v. Whittaker*, 44 N.E.3d 716, 719 (Ind. Ct. App. 2015). “The dissolution court that adopted the agreement retains jurisdiction to interpret the terms of property settlement agreement and to enforce them.” *Id.* Yet, “because [this Court is] reviewing the construction of the terms of a written contract, which is a pure question of law, [this Court's] standard of review is *de novo*.” *Id.*

B. Controlling Law.

Indiana courts have long “encouraged divorcing couples to resolve their disputes in their own fashion by entering into settlement agreements.” *Copple v. Swindle*, 112 N.E.3d 205, 210 (Ind. Ct. App. 2018). However, “[a]s to property division, those agreements are not subject to court modification unless the agreement allows for modification, the parties agree to modification, or a court finds the agreement was procured using fraud, duress, or undue influence.” *Id.* at 211.

Notwithstanding the prohibition against modification of property settlement agreements, our Supreme Court has made clear that “dissolution courts retain jurisdiction to interpret the terms of their property settlement agreements and to enforce them.” *Fackler v. Powell*, 839 N.E.2d 165, 167-8 (Ind. 2005). This sentiment is codified in Indiana Code section 31-15-7-10(1), which

provides, in relevant part, that, “all orders and awards contained in a dissolution of marriage decree or legal separation decree may be enforced by: (1) contempt.”

In interpreting this statutory code section, this Court has held that “a trial court may use its contempt power to enforce an order that requires performance instead of payment of a fixed sum to coerce a party into compliance with an underlying order or decree.” *Dawson v. Dawson*, 800 N.E.2d 1000, 1003 (Ind. Ct. App. 2003). *See also Cowart v. White*, 711 N.E.2d 523, 531 (Ind. 1999) (a court may use the power of “contempt to enforce an order that requires performance.”). Precedential case law makes clear that “[c]ontempt is for the benefit of the party who has been injured or damaged by the failure of another to conform to a court order issued for the private benefit of the aggrieved party.” *Cowart v. White*, 711 N.E.2d 523, 530 (Ind. 1999).

C. Analysis.

As Appellant correctly notes, the Parties entered into a Settlement Agreement on or about May 16, 2012, with same being incorporated into the trial court’s Decree of Dissolution of Marriage on or about July 2, 2012. Appellee’s App. Vol. II, pp. 19-21. The Settlement Agreement, in relevant part, provided:

“The parties own certain tract of real estate, which has common address of 810 West 2nd Street, Seymour, Indiana. The legal description of said real estate is incorporated by reference herein. As of the date of the decree, the real estate shall become the sole and individual property of wife. Husband will execute and deliver to wife a Quitclaim Deed, subject to all encumbrances, including mortgages and real estate taxes. Wife will pay all mortgages, taxes, insurance and utilities and hold husband harmless therefrom. Wife shall refinance the mortgage debt on said real estate in to her sole name at her earliest possible opportunity” Appellee’s App. Vol. II, pp. 19-20.

Thus, it is undisputed that Wife was entitled to the Marital Home. Appellee’s App. Vol. II, pp. 19-20.

However, what is also undisputed is that Wife was required to pay: (1) all mortgages, taxes, insurance and utilities; (2) hold husband harmless; and (3) refinance the mortgage debt to her name solely at the earliest possible convenience. Appellee's App. Vol. II, pp. 19-20. Wife, for over seven (7) years, failed to fulfill her contractual obligation to Husband.

1. The Trial Court's Order to Auction Marital Home was a Proper Enforcement of the Parties' Settlement Agreement.

Despite Appellant having over seven (7) years to complete the above obligations, Appellant tries to argue that the Settlement Agreement only required her to complete the above at her "earliest possible opportunity" and "there was no specific time requirement for her to do so." Appellant's Br. p. 9. Moreover, Appellant also attempts to argue that the trial court's actions of forcing an auction of the Marital Home, after Appellant had for seven (7) years failed to complete the above obligations, is an improper modification of the divorce decree. Appellant's Br. p. 10.

Appellant's arguments fail, as analyzed in more detail *infra*, because the trial court's actions of forcing an auction of the Marital Home is within the trial court's authority to "use its contempt power to enforce an order that requires performance instead of payment of a fixed sum to coerce a party into compliance with an underlying order or decree." *Dawson v. Dawson*, 800 N.E.2d 1000, 1003 (Ind. Ct. App. 2003). In this action, there is no modification of the Settlement Agreement as Appellant is entitled to all proceeds from the sale Marital Home because it is her sole and separate property, as contemplated by the Settlement Agreement. Appellee's App. Vol. II, pp. 15-16. Nor does the sale affect the division of property, as Husband is receiving no monetary benefit from the selling of same. *Id.*

Instead, this is a proper enforcement of the Settlement Agreement because Appellant has failed to fulfill her contractual duties to Husband, and the trial court's order requiring Appellant to auction the Marital Home is the only available remedy left to coerce Appellant to perform her

contractual obligations. (i.e., removing Husband's name from mortgage, refinancing the house, and holding Husband harmless).

This Court's decision in *Dawson v. Dawson* provides clarity to this current matter. In *Dawson*, the husband was appealing the trial court's invocation of its contempt power to enforce a provision of the divorce decree requiring the husband to satisfy the second mortgage on the marital residence. 800 N.E.2d 1000, 1002 (Ind. Ct. App. 2003). The *Dawson* Court noted that, the divorce decree "clearly requires performance on the part of [husband] to refinance or otherwise satisfy the second mortgage . . . so that the mortgage lien is removed from the marital residence and is no longer considered a debt of [wife]'s." *Id.* at 104.

The *Dawson* Court concluded, that "contrary to [husband]'s assertion, the trial court has the authority to find him in contempt for his failure to comply with the Dissolution Decree precisely because of his failure to perform." *Id.* at 1005. Thus, the *Dawson* Court held the trial court was "merely ordering husband to perform the provision in the divorce decree", and therefore, "[t]he trial court was clearly within its discretion in exercising its contempt authority in the instant case." *Id.*

Another insightful decision is the matter of *Whittaker v. Whittaker*. In *Whittaker*, the husband was appealing the trial court's denial of his request to find wife in contempt for failure to pay sums designated as maintenance in a settlement agreement. 44 N.E.3d 716, 717 (Ind. Ct. App. 2015). Specifically, the settlement agreement in *Whittaker* entitled husband to monthly payments from wife. *Id.* at 718. The husband then filed a contempt petition for wife's failure to make payments, but the trial court found that, while wife owed husband upwards of \$75,000, such judgment was unenforceable through contempt. *Id.* at 719.

The *Whittaker* Court reversed the trial court's decision, and remanded with instructions to consider husband's contempt petition. *Id.* at 720. In reaching this conclusion, the *Whittaker* Court noted that "[t]he instant case . . . involves a failure to perform an obligation set forth in a dissolution decree." *Id.* The *Whittaker* Court went on to hold that "computation of delinquency was not an original order for payment of a fixed sum. Nor did it transform an obligation incorporated into a dissolution decree into a fixed money judgment outside the parameters of Indiana Code Section 31-15-7-10." *Id.*

In contrast, compare this Court's decision in *Dillard v. Dillard*. In *Dillard*, the wife appealed the trial court's modification of the parties' property settlement agreement. 889 N.E.2d 28, 29 (Ind. Ct. App. 2008). Specifically, the trial court in *Dillard* modified the parties' settlement agreement by modifying the amount of proceeds each party was entitled to under the agreement. *Id.* at 31-32. The *Dillard* Court reversed the trial court's decision, holding that "modifying the division of the proceeds from the sale of the marital residence constituted an abuse of discretion for failure to meet the statutory requirements for modification of a property settlement agreement." *Id.* at 33.

In this present matter, the trial court's order to sell/auction the home is a proper use of its contempt authority to enforce Appellant's compliance with her contractual duties under the Settlement Agreement. Like *Dawson* and *Whittaker*, the trial court in this matter is merely ordering Appellant to perform her contractual duties under the Settlement Agreement, and does not transform Appellant's obligations under the Settlement Agreement. Unlike *Dillard*, the trial court's order in this matter does not modify the division of property, as Wife is entitled to all proceeds of the marital home.

While Appellant tries to minimize her actions by playing the victim, Appellant conveniently overlooks the damage she has caused Husband. Specifically, Appellant's failure to fulfill her obligations under the Settlement Agreement, which include her failure to make mortgage payments and failure to refinance the home in her name, have, for over seven (7) years, only been to the detriment of Husband as Husband's credit has been adversely affected. The trial court provided Appellant with every opportunity to perform her contractual obligations. Appellant refused. Now, Appellant complains that the trial court erred because the trial court fashioned the only remedy left to protect Husband, the aggrieved party. *See Cowart*, 711 N.E.2d at 531 (“[c]ontempt is for the benefit of the party who has been injured or damaged by the failure of another to conform to a court order issued for the private benefit of the aggrieved party.”).

In summary, the trial court's actions were a proper use of its contempt power to coerce compliance by Appellant as to her contractual obligations under the Settlement Agreement. The trial court was well within its authority to fashion such an order. This Court should uphold the trial court's determination.

2. The Trial Court's Order Deprived Wife of Nothing, but Instead, Enforced Wife's Contractual Obligation for the Benefit of Husband as the Aggrieved Party.

Appellant continues to portray herself as some sort of victim for her own failure to perform her contracted for obligations under the Settlement Agreement. Appellant discounts the simple fact that the Settlement Agreement required each party to perform certain obligations. Appellant, for over seven (7) years, failed to perform those obligations.

Further, Appellant's argument that she was “never found in contempt” is a farce. Husband filed his first contempt petition on or about June 10, 2013, approximately one (1) year after the Settlement Agreement. Appellee's App. Vol. II, pp. 22. The trial court issued a Rule to Show cause

to Appellant on or about June 11, 2013. Appellee's App. Vol. II, pp. 26. A hearing was held on or about July 29, 2013. Appellee's App. Vol. II, pp. 4. Following said hearing, the trial court, on or about August 12, 2013, issued its Order on Rule to Show Cause, specifically directing:

“That the Respondent shall have 60 days to refinance the property at 810 West Second Street, Seymour, Indiana and to remove the Petitioner's name from any loan associated therewith.” Appellee's App. Vol. II, pp. 27.

Wife never complied.

After Wife failed to comply with the trial court's order, on or about November 26, 2013, Husband filed his second contempt petition. Appellee's App. Vol. II, pp. 29. Again, the trial court issued a Rule to Show Cause against Wife on or about December 2, 2013. Appellee's App. Vol. II, pp. 32. Wife then filed four (4) Motions to Continue, all of which were granted except the final. Appellee's App. Vol. II, pp. 5-6. After a hearing was finally held on or about April 17, 2014, the trial court issued a new order, again directing Wife to “refinance the property located at 810 W. Second St. within sixty (60) days of this Order.” Appellee's App. Vol. II, pp. 33.

Wife never complied.

Next, on or about May 14, 2018, Husband again filed a Petition for Contempt for Wife's continued failure to follow court orders and refinance the home. Appellee's App. Vol. II, pp. 34. The trial court, again, issued a Rule to Show Cause to Wife on or about May 14, 2018. Appellee's App. Vol. II, pp. 38. A hearing was held on or about February 4, 2019, and the case was continued generally with the understanding that Wife would put the Marital Home up for sale to resolve her failure to perform contractual duties. Tr. Vol. II, pp. 4-6.

Wife failed to comply. As such, Husband was required to request a hearing on or about June 21, 2019. Appellee's App. Vol. II, pp. 43. The trial court held a hearing on August 15, 2019,

and, again, commanded Wife to sell the marital home within sixty (60) days. Appellee's App. Vol. II, pp. 46. Wife never complied.

Finally, Husband filed a Petition for Rule to Show Cause on or about September 23, 2019 for Wife's continued and perpetual failure to perform her contractual obligations and abide by previous court orders. Appellee's App. Vol. II, pp. 49. The trial court, on or about September 24, 2019 issued another Rule to Show Cause to Wife. Appellee's App. Vol. II, pp. 11. After a hearing was held on or about October 10, 2019, the trial court issued an order instructing Wife to sell the marital home. Appellee's App. Vol. II, pp. 53. The trial court set a review hearing for December 16, 2019. Appellee's App. Vol. II, pp. 54.

After the review hearing, the trial court issued an order, on or about December 18, 2019, providing that Wife had thirty (30) days to sell the Marital Home or the Court reserved the right to select a realtor or order the property auctioned. Appellee's App. Vol. II, pp. 55. Wife did not comply with the December 18, 2019. Appellee's App. Vol. II, pp. 56-58. On or about January 20, 2020, Husband filed his Motion for Court Order to Auction Marital Residence. Appellee's App. Vol. II, pp. 56-58. The Court granted this request on or about January 22, 2019. Appellee's App. Vol. II, pp. 15.

As demonstrated by the above facts of the case, Wife was in contempt, and the Court issued its first Order on Rule to Show Cause in 2013. Appellee's App. Vol. II, pp. 4. Wife never purged herself of the contempt because she failed, for over seven (7) years, to perform her contractual obligations. Thus, Wife's argument fails as it is in contradiction to the factual circumstances of the matter.

In summary, Wife received seven (7) years to perform her contractual obligations but failed to do so. Wife was aware of her contemptuous behavior as early as 2013 when the trial court issued

its first Rule to Show Cause. As such, Wife cannot now complain that she is being “deprived” of the “benefit of the property” when, for seven (7) years, her actions have been solely to the detriment of Husband. Wife agreed to refinance the Marital Home in 2012 when she signed the Settlement Agreement, and to this day, Wife has failed to fulfill this obligation. This Court should uphold the trial court’s Order to auction the marital residence.

3. Wife’s Final Argument is Waived for Wife’s Failure to Provide Any Citations to Legal Authority and/or Record Evidence.

Wife’s final argument under the first issue present is waived because Wife wholly failed to provide a single citation to any authority whatsoever in support. Appellant’s Br. p. 11. Our Supreme Court has been clear in that “[a] litigant who fails to support his arguments with appropriate citations to legal authority and record evidence waives those arguments for our review.” *Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015). Thus, because Wife failed to support her argument with appropriate citations to legal authority or record evidence, her argument in subsection three (3) under the first issue presented is waived. Appellant’s Br. p. 11.

Waiver notwithstanding, Wife’s argument that “she was not found in contempt” fails for the reasoning analyzed *supra*. See Appellee’s Br. pp. 19-22.

Finally, Wife’s argument that “the January 22, 2020 Order does nothing to enforce the terms or intent of the Decree” is illogical. Appellee’s Br. p. 11. The trial court’s order auctioning the house enforces the terms of the Settlement Agreement because it is the only way that Wife will fulfill her contractual obligations to Husband, that being re-financing the Marital Home and holding Husband harmless. The trial court gave wife over seven (7) years to perform her obligations, but Wife refused to do so. Appellee’s App. Vol. II, pp. 2-14. The trial court fashioned an order that will fulfill the intent of the Parties, which was for Wife to be entitled to the value of the Marital Home while Husband was held harmless by Wife through her actions of refinancing.

The trial court's order allows Wife to retain the value of the Marital Home while finally fulfilling the obligations Husband contracted for in 2012. Appellee's App. Vol. II, pp. 15-16.

This Court's decision in *Phillips v. Delks* provides insight to this current matter. In *Phillips*, the husband was appealing, in part, the trial court's contempt finding and order to sell real property awarded to husband as part of the parties' settlement agreement. 880 N.E.2d 713, 721 (Ind. Ct. App. 2008). Specifically, the husband in *Phillips* argued that the trial court erred in ordering the sale and/or refinancing of the vehicle he was awarded pursuant to the parties' settlement agreement because husband claimed it was a modification of the parties' agreement. *Id.* The Phillips court rejected husband's argument. *Id.* at 723. In rejecting husband's argument, the Phillips court explicitly found:

“[w]e emphasize that the trial court did not order Husband to transfer ownership of the [vehicle] to Wife, which would have been an impermissible modification of the Agreement. Rather, the court ordered Husband to either sell or refinance the [vehicle] and pay off the loan, so that the vehicle is no longer jointly titled in Wife's name and will not affect her credit if monthly payments are missed. This was not improper.” *Id.*

The same is true in this present matter. The trial court's order to auction the home is so that the Marital Home is no longer in Husband's name and will not affect his credit if monthly payments are missed. Appellee's Br. Vol. II, pp. 15-16. Moreover, just like *Phillips*, the trial court's order did not transfer ownership of the Marital Home to Husband, and as such, it is not a modification of the Settlement Agreement. *Id.*

In summary, the trial court's January 22, 2020 is a proper enforcement of the Settlement Agreement. This Court should uphold the trial court's decision.

III. Appellant was Not Denied Due Process of Law when the Trial Court Ordered the Marital Home to be Auctioned After Appellant Failed to Fulfill Her Contractual Obligations Pursuant to the Parties' Settlement Agreement.

A. Standard of Review.

“In general, due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses.” *D.G. v. S.G.*, 82 N.E.3d 342, 347 (Ind. Ct. App. 2017). “Whether a party was afforded an opportunity to be heard is a question of law, which is reviewed de novo.” *Id.*

B. Controlling Law.

As this Court has explained, “The Fourteenth Amendment guarantees both procedural and substantive due process rights.” *In re F.S.*, 53 N.E.3d 582, 591 (Ind. Ct. App. 2017). Our Supreme Court has determined that, in reviewing due process challenges, reviewing courts are required to use a “two-part inquiry.” *Perdue v. Gargano*, 964 N.E.2d 825, 832 (Ind. 2012). That is, “the first inquiry in every due process challenge is whether the plaintiff has been deprived of a protected interest in property or liberty.” *Id.* “Only after finding the deprivation of a protected interest [does this Court] look to see if the State’s procedures comport with due process.” *Id.*

“Procedural due process ensures that a party will be given notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *In re F.S.*, 53 N.E.3d at 591. When a reviewing court considers the process due in a specific situation, our Supreme Court has instructed that the following factors must be weighed:

“1) the private interest affected by the official action; 2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and 3) the “[g]overnment’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.”

(hereafter, the “Mathews Factors”). *Hewitt v. Westfield Washington School Corp.*, 46 N.E.3d 425, 434 (Ind. 2015).

Due process protections are in place to “bar state action that deprives a person of life, liberty, or property without a fair proceeding.” *Matter of L.S.*, 82 N.E.3d 333, 339 (Ind. Ct. App. 2017). Ultimately, as this Court has recognized, “[t]he fundamental requirement of procedural due

process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Parker v. Indiana State Fair Bd.*, 992 N.E.2d 969, 978 (Ind. Ct. App. 2013).

C. Analysis.

Appellant argues she was denied due process after having seven (7) years to fulfill her contractual obligations to Husband. Appellant’s Br. p. 12. Appellant provides several different reasons to support her proposition, all being equally flawed. Husband responds to each in turn.

1. Mother was Given Opportunity to Explain her “Reasons” for Being Unable to Fulfill her Contractual Obligation.

Appellant first argues that “[f]rom the time Husband filed his Petition for Contempt on May 14, 2018, there were no substantive hearings addressing the reason or reasons Wife had been unable to refinance the residence in her name alone.” Appellant’s Br. p. 12-13. To begin, Appellant voluntarily entered into a contract, one which she agreed to “refinance the mortgage debt on said real estate.” Appellee’s App. Vol. II, pp. 19-20. Thus, if Appellant was unable to complete such task, Appellant should not have voluntarily contracted for same.

Moreover, a review of the CCS reveals that Appellant received every opportunity to explain her reasons for being unable to refinance the residence. Appellee’s App. Vol. II, pp. 2-14. For example, the trial court’s very first Order on Rule to Show Cause from August 12, 2013 explicitly stated that “in the event the Respondent is unable to refinance said property, she shall notify the Court and counsel for Petitioner immediately and the Petitioner shall then have the right to list said property for sale and ensure it is sold at reasonable price.” Appellee’s App. Vol. II, pp. 28. Another example, the trial court’s order from April 25, 2014, ordered Wife to have her father co-sign on the refinancing so to eliminate Husband from current promissory note and mortgage. Appellee’s App. Vol. II, pp. 33.

Clearly, Appellant's failure to fulfill her contractual obligations has been an ongoing issue for years. The trial court gave her over six (6) years to explain her inability to refinance the home, and explicitly commanded Appellant to inform the court if she was unable to do so. Appellant failed, and now wants to claim there was no "substantive hearing." There is no need for additional substantive hearings because Appellant agreed to do something, and failed to do it.

Furthermore, at the hearing of February 4, 2019, the following exchange occurred:

"THE COURT Alright we are here in the matter of Don Watts and Valeria Padilla 36D02—1203—DR—119. Don Watts appears in person and by his counsel Ms. Pardieck. Ms. Padilla appears in person and by her counsel Mr. Risser. Mr. Risser this has been going on for five years. Your client's been in Court and said she was going to refinance, she's been in Court and said her dad was going to help her refinance. You know the man's got a right to have this off his credit what's the deal?

MR. RISSER I can illicit testimony from my client if it would be helpful to the Court.

THE COURT Well, what's the solution? I mean if she files this counter suit and she finally refinances can, how is that going to help him get this property out of his name?

MR. RISSER One option of hers is just to walk away and to file chapter seven. That's not good for anybody. What we would like to is to list the property with Steve Silver umm, it would appear there's uhh, a large sum of equity in the property. Uhh, then at some point then file chapter seven bankruptcy." Tr. Vol. II, pp. 4.

Thus, as demonstrated above, despite Appellant's contentions, Appellant very easily could have explained her inability to obtain refinancing at the February 4, 2019 and chose not to.

2. Respondent was Aware of the Potential for an Auction of Marital Home And Waived Any Argument Regarding the Propriety of Same.

Appellant's next argument is fatally flawed because Appellant admits she knew about the potential that the Marital Home would be auctioned. Appellant's Br. p. 13. Specifically, Appellant claims that "[t]here was **no discussion regarding the possibility of selling the house at auction other than a statement from the Trial Court at the end of the October 10, 2019 hearing.**"

Appellant's Br. p. 13 (emphasis added). As Appellant makes clear, she was aware of the potential to auction the Marital Home by at least October 10, 2019.

Moreover, the trial court's Order of December 18, 2019 provided that Appellant had thirty (30) days to sell the Marital Home, and if not sold, "the Court reserves the right to select the realtor to handle the sale or to order the property auctioned off." Appellee's App. Vol. II, pp. 55. Assuming this was the first court order discussing the auctioning of the Marital Home, Appellant waived her right to challenge the issue because her Notice of Appeal was untimely as it relates to the December 18, 2019 Order.

3. Appellant was Entitled to No Right to Respond to Husband's Request to Auction Marital Home.

Third, Appellant claims that she was "given no opportunity to respond to" Husband's Motion to Auction the Marital Residence. Appellant's Br. pp. 13. The issue with Appellant's argument is that Appellant was not entitled to an opportunity to respond. Appellant dragged the matter out for over seven (7) years, and is not entitled to continue to do the same. The trial court reserved the right to auction the Marital Home if not sold in thirty (30) days. Appellee's App. Vol. II, pp. 55. Appellant failed to sell the Marital Home in that time frame. Appellee's App. Vol. II, pp. 56. Not only did Appellant fail to do this, but Appellant failed to even make a good faith effort in doing so, best evidenced by her actions of taking the Marital Home off the market for a period of time after the trial court ordered it sold in thirty (30) days. Appellee's App. Vol. II, pp. 56-57.

After Appellant failed for thirty (30) days to sell the Marital Home, the trial court took the action of auctioning the property, a right reserved by the trial court via the December 18, 2019 Order. Appellee's App. Vol. II, pp. 15-16, 55.

4. The Mathews Factors.

Finally, Wife turns to the Mathews Factors to argue she was denied procedural due process. Appellant's Br. p. 13. Husband will address each factor in turn.

In turning to the first factor, Wife asserts that the "private interest by the official action is significant as to Wife." Appellant's Br. p. 13. Then Appellant proceeds to declare that "Husband's interests in the property are minimal, as he gave up all claims to it in the Decree and settlement agreement." Appellant's Br. p. 14. Husband does not dispute that he gave up all claims to the Marital Home when he signed the Marital Home. In fact, Husband would like nothing more than for this whole matter to be resolved, but Appellant continues to refuse to perform her contractual obligations.

Husband does, however, take issue with the statement that "Husband's interests in the property are minimal." Appellant's Br. p. 14. This assertion, besides from being selfish, is patently false as Husband continues to remain liable for the Marital Home due to Appellant's refusal to refinance or sell same. In fact, Husband has an incredible private interest because Husband is the one that has suffered the adverse consequences of Appellant's failure to fulfill her obligations as Husband's credit has been negatively impacted.

Moving on to the second of the Mathews Factors, Appellant makes the bold claim that "Wife asserts that the risk of erroneous deprivation . . . is highly probable, because there were *no* procedural safeguards utilized." Appellant's Br. p. 14. It is truly a mystery how Appellant, in good faith, could claim there were no procedural safeguards utilized when the trial court gave Appellant seven (7) years to fulfill her contractual obligations. Appellant seems to suggest that the trial court was to continue holding hearings, regardless of the negative impact it had on Husband, to provide Appellant with the opportunity to continue to come up with excuses as to why she could not

perform the obligations she voluntarily agreed to perform. In short, Appellant's argument is nonsense as the trial court gave her every opportunity to perform her contractual obligations.

Finally, Appellant argues that the "government has little interest here." Appellant's Br. p. 14. Appellant's argument, is again, fatally flawed. The trial court, as an arm of the government, has a great interest in the resolution of this matter. See *Fuchs v. Martin*, 845 N.E.2d 1038, 1041 (courts have an interest in "the efficient judicial administration of a party's case"). To the extent that Wife argues that it is against public policy, it is not. Instead, Wife's actions of failing to fulfill her contractual obligations to Husband for seven (7) years at Husband's sole detriment is against public policy. Therefore, this Court should affirm and uphold the trial court's orders of January 22, 2020 and February 10, 2020.

CONCLUSION

For the foregoing reasons, this Court should find that Appellant forfeited her appeal of the trial court's authority to auction the Marital Home as Appellant's appeal is untimely as to that issue. Moreover, if this Court does not find Appellant forfeited her right to appeal the issue, this Court should uphold the trial court's orders as a proper enforcement of the Parties' Settlement Agreement.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I, Alexander N. Moseley, verify that this Appellee's Brief contains no more than 14,000 words, including footnotes, as prescribed by Ind. App. Rule 44(E), notwithstanding those items excluded from page length limits under Ind. App. Rule 44(C), as determined by the word counting function of Microsoft Word 2010

/s/ Alexander N. Moseley
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served upon the following this
6th day of July, 2020 via the Court's electronic filing system:

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