

No. \_\_\_\_\_

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In The  
**Supreme Court of the United States**

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SETH ADAM LILLY,

*Petitioner,*

v.

MELISSA ANN LILLY,

*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF INDIANA

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PETITION FOR WRIT OF CERTIORARI

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## **Questions Presented**

1. Did the refusal of the Indiana state courts to enforce the Petitioner's rights as unambiguously stated in the Settlement Agreement between the parties infringe Petitioner's rights to due process under the Fourteenth Amendment, or the Contract Clause?

2. Did the Indiana Court of Appeals' application of only an abuse of discretion standard of review to the trial judge's construction of the parties' contract further erode the protections afforded by these federal constitutional guarantees?

**Corporate Disclosure Statement**

Not applicable.

**Parties to the Proceedings**

Petitioner Seth Adam Lilly was the defendant in the Indiana Superior Court, the appellant in the Indiana Court of Appeals, and the appellant in the Indiana Supreme Court. Respondent Melissa Ann Lilly was the plaintiff in the Indiana Superior Court, the appellee in the Indiana Court of Appeals, and the appellee in the Indiana Supreme Court.

**Statement of Related Proceedings**

There are no other court proceedings directly related to this case.

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## **Petition for a Writ of Certiorari**

Seth Adam Lilly petitions this Court for a writ of certiorari to review the decision of the Indiana Supreme Court, which affirmed the underlying decisions of the Indiana Court of Appeals and Indiana Superior Court.

## **Opinions Below**

The April 9, 2025 Opinion of the Indiana Supreme Court is unpublished and appears at Appendix A. The November 26, 2024 Opinion of the Indiana Court of Appeals is unpublished and appears at Appx B.

## **Jurisdiction**

The Opinion of the Indiana Supreme Court was issued on April 9, 2025, Appx. B. This Court's jurisdiction is invoked under 28 U.S.C.A. § 1257. App A.

## **Constitutional and Statutory Provisions Involved**

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, "... nor shall any State deprive any person of life, liberty, or property, without due process of law."

The Constitution's Contract Clause provides, "No State shall ... pass any ... Law impairing the Obligation of Contracts."

## **Statement of the Case**

The parties were married in 2016 and had two children during the marriage. Appx. B.

In June 2022, the Wife (Respondent here) filed for divorce in the Indiana State Court. Six months later, on January 23, 2023, the parties entered into a Marital Settlement Agreement, which addressed,

among other things, the division of marital property. Appx. B.

This included the division of the marital residence at 239 N. Crews Place, West Terre Haute, IN 47885, which consisted of a house and other improvements on four parcels of land. The parties' Agreement stated that the Wife "shall be awarded said real property and shall be solely responsible for, pay and keep current, any and all indebtedness thereon, holding Husband harmless therefrom," but also included the following condition:

Wife shall assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within six (6) months. In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband's request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value. If Husband does not purchase the property, then he shall execute a Quit Claim Deed relinquishing all interest that he may have in conjunction with the refinancing or loan assumption or sale. Quit Claim Deed to be prepared by Wife's attorney. Husband shall cooperate with any attempts to refinance, assume or sell the marital residence. Appx. B.



Six months passed and the Wife did not assume the mortgage loan or refinance as required by the Settlement Agreement. The Husband then invoked his corresponding right under the Agreement to purchase the property “at fair market value.” Appx. B.

The Wife then filed a post-judgment petition in the Indiana state court, claiming she had secured the necessary financing within six months of the Settlement Agreement but that the Husband refused to sign the documents to remove himself from the mortgage. Appx. B.

The Husband opposed the Wife’s petition and cross-petitioned to compel her to cooperate with his request to purchase the property himself. He noted that the Wife failed to assume the mortgage or obtain refinancing within the six months prescribed by the Settlement Agreement, thereby triggering the Husband’s right to purchase as provided in the Agreement. Appx. B.

The evidence presented at the state court proceeding showed that on July 21, 2023, Wife's counsel sent an email to Husband's counsel advising him that Wife “ha[d] obtained financing for the residence[.]”. On July 31, 2023, Husband's counsel sent Wife's counsel the following email: “Has [Wife] been able to obtain financing? [Husband] would like to purchase the marital residence for the appraisal amount. Let me know.” An hour later, Husband's counsel responded to Wife's counsel's July 21, 2023, email with the following: “What company did she obtain financing from? Do you have anything showing that she did? Was it within the 6 month window?” Appx. B.

On August 4, 2023, a representative from a title company (“the representative”) sent Husband an email advising him that she was working with Wife on refinancing the marital residence. The representative informed Husband that she needed him to sign and have notarized the documents, including a quitclaim deed that she had attached to the email. The husband did not respond to the representative's email or sign the documents. Appx. B.

On August 10, 2023, Husband's counsel emailed Wife's counsel to inquire whether she had obtained the proof that Wife had “refinanced within 6 months.” Wife's counsel responded that Wife could not finalize the refinancing of the marital residence until Husband signed the necessary documents, which he had refused to do. Furthermore, Wife's counsel pointed out that, pursuant to the Settlement Agreement, Wife had been “required to obtain financing in 6 months, not refinance completely .... She did not have to provide proof of the same, even though it's attached.” She attached a one-page “Summary of Findings” document to her email, which included Wife's name as the borrower, the submission date of July 21, 2023, and the recommendation as “Approve/Eligible[.]” Additionally, Wife's counsel informed Husband's counsel that Wife would file for sanctions if Husband did not immediately cooperate and sign the necessary documents so that Wife could complete the refinancing of the marital residence. Appx. B.

On August 15, 2023, Husband's counsel responded that, upon reviewing the summary findings document, Wife had not timely secured financing for the marital residence as the Settlement Agreement required. Husband's counsel inquired about the type

of loan Wife had obtained and which documents necessitated Husband's signature. Appx. B.

Wife's counsel responded that Wife had completed her part of the refinancing and that the title company was waiting for Husband to sign the quitclaim deed. Wife alleged that she had secured the necessary financing for the marital residence within the six-month time frame outlined in the Settlement Agreement, yet Husband had refused to execute the documents needed to remove him from the mortgage. Appx. B.

Husband stated that, as shown by the August 16, 2023 email from Wife's loan officer ("the loan officer"), "the first step in any loan process is to get approved/eligible with the automated underwriting system based on the applicant's application." Husband noted that the loan officer had explained that additional steps needed to be completed to verify the accuracy of the information Wife had submitted. Although the loan officer had stated that this step had been completed, he did not provide the completion date. According to Husband, the loan officer further stated that Wife's insurance information needed to be updated before the process could be completed. Husband stated that Wife had failed to assume the mortgage loan and had not obtained refinancing within the six-month deadline set by the Settlement Agreement, triggering Husband's right to sell the residence and his right of first refusal to purchase it, which he was electing to do. Appx. B.

The state trial court rejected the Husband's contention and compelled him to cooperate with the Wife's financing efforts. The trial court interpreted the Settlement Agreement as providing that the Husband "only had a right to purchase after the

house was placed for sale and then he had a right of first refusal.” However, the Court sees no evidence that [Husband] ever requested that the house be placed for sale, so he does not yet have an option for first right of refusal at the fair market value. Since [Wife] has refinanced and was prepared to close on August 25, 2023, and is still prepared to close, the Court orders that she proceed with the refinancing so that [Husband]’s name can be removed. Because the Court is concerned that [Husband] will not cooperate to ensure this is accomplished, by separate Order the Court has appointed Attorney Jon Spur to be a Commissioner to sign on behalf of [Husband], allowing this matter to be resolved without any further delay and/or conflict,” Appx. B.

In moving for post-decision relief, the Husband stressed that the trial “[c]ourt’s finding that ... ‘the Court sees no evidence that [Husband] ever requested that the house be placed for sale so he does not yet have an option or first right of refusal at the fair market value’ is not supported by the evidence,” was belied by the evidence because “on July 31, 2023, ... [Husband]’s counsel inquired about the marital residence by stating [Husband] ‘would like to purchase the marital residence for the appraisal amount.’” The trial court, nonetheless, denied the Husband’s motion and upheld its decision. Appx. B.

The Husband appealed to the Indiana Court of Appeals, arguing that the trial court misconstrued the plain, unambiguous language of the parties’ Settlement Agreement by denying his petition for the right to purchase the property. However, the Court of Appeals rejected the Husband’s appeal. The court stated that a trial court’s “interpretation and enforcement of a settlement agreement” is reviewed not de novo but only “for an abuse of discretion,”

which “occurs if the trial court’s decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.” Appx. B.

The Court of Appeals agreed that “Wife did not timely obtain refinancing,” but stated that “Husband did not request that the marital residence be immediately placed for sale,” as the Settlement Agreement required. “Rather, his counsel simply sent Wife’s counsel an email expressing Husband’s interest in purchasing the marital residence for the appraised value. Husband’s expression of interest was not a request that the marital residence be immediately placed for sale, and the Settlement Agreement used the term fair market value and not appraised value. Further, even if Husband had requested that the marital residence be immediately placed for sale, pursuant to the plain language of the Settlement Agreement, Husband had only the right of first refusal to purchase the property. As a result, the trial court did not abuse its discretion in interpreting the Settlement Agreement.” Appx. B. The Court further stated,

We further note that by the time of the August 2023 hearing, the trial court was faced with two parties who had failed to comply with the terms of the Settlement Agreement. Although Wife had not timely obtained refinancing pursuant to the terms set forth in the Settlement Agreement, by the time of the August 2023 hearing, she had obtained the refinancing and was ready to close on the marital residence. However, Husband was refusing to sign the required documents, which was

another violation of the Settlement Agreement. In light of the fact that Husband had already purchased a home, and because allowing Wife to proceed with the closing would allow the children to remain in the home in which they had been raised, the trial court ordered Wife to proceed with the closing so that Husband's name would be removed from the mortgage. The trial court also appointed a commissioner to sign on Husband's behalf so that this matter could be resolved without any further delay or conflict. We conclude that the trial court fashioned a reasonable enforcement of the Settlement Agreement and did not abuse its discretion. Appx. B.

### **Reasons for Granting the Petition**

The Court should grant certiorari to review whether the Indiana state court violated the Petitioner's rights to due process under the Fourteenth Amendment and the Contract Clause. We argue that the state court did so in two ways: first, by failing to interpret a private contract between private individuals according to its unambiguous language, and second, by having the state appellate court review the trial court's interpretation of the contract only for "abuse of discretion," which further undermines the guarantee of due process provided by the Fourteenth Amendment provides.

The Due Process Clause of the Fourteenth Amendment applies to state court proceedings, such as Indiana's in this case. The right is violated in a state court post-divorce hearing when the state deprives a party of life, liberty, or property without ensuring

fundamental fairness in the judicial process. A due process violation can occur in a post-divorce hearing if the state court (among other considerations),

*Fails to provide adequate notice:* Due process requires that the government provide reasonable notice of the proceedings and the grounds for its action.

*Denies a meaningful opportunity to be heard:* Individuals should have the chance to present their case and provide reasons why the court should not take a particular action.

*Suppresses material evidence:* In contexts where a person's liberty or property is at stake, suppressing favorable evidence that is material to the case can violate due process.

*Violates other fundamental rights:* The Due Process Clause protects fundamental rights. For example, if state action in a post-divorce proceeding significantly interferes with parental rights or the right to maintain a familial relationship without proper procedures, it may be deemed a due process violation.

*Imposes an unfair burden of proof:* While the specific standard may vary, the burden of proof should be reasonable and ensure a fair outcome, especially in cases involving significant rights, such as those protected by other constitutional provisions.

In Lujan v. G & G Fire Sprinklers, Inc., 532 U.S. 189, 197, 121 S.Ct. 1446, 149 L.Ed.2d 391 (2001), the Court stated that if a state provides an ordinary judicial process for resolving a breach of contract claim, then federal due process is satisfied. That case upheld a California statute authorizing the state to withhold payments owed to a contractor on a public works project if the subcontractor failed to comply with specific requirements.

The Court should clarify the extent to which such protections apply to rights under a contract between two private parties (and how this implicates the Contract Clause, as discussed below). The Court should establish that, in this case, the state courts violated the Petitioner's rights by failing to enforce the parties' Settlement Agreement per its clear language. The trial court determined that the Husband had only a right of first refusal, which was activated only after the property was listed for sale. However, the clear language of the Settlement Agreement does not indicate that. As summarized above, the Agreement states, "Wife shall assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within six (6) months. In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband's request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value." The state appeals court conceded that the Wife "did not timely obtain refinancing." This, in turn, triggered the Husband's right to purchase, which he invoked through his lawyer's emails, as the state court record clearly shows (On July 31, 2023, Husband's counsel emailed Wife's counsel, stating that, "[Husband] would like to purchase the marital residence for the appraisal amount.")

This required the state court to enforce the purchase right that the Husband holds under the parties' contract. The clear language of the agreement did not prevent the Husband from buying the Marital Residence without waiting for a third-party offer, contrary to the trial court's interpretation. The state



courts added terms to the Settlement Agreement by implying that the Husband could only purchase the residence by exercising his right of first refusal.

The state court's refusal to enforce the parties' Settlement Agreement according to its plain language infringed on Petitioner's federal due process rights. This Court should grant review in this case to clarify this important area of law.

For example, federal courts have held that state courts are obligated under the Due Process Clause to provide adequate remedies for breaches of contract, *e.g.*, Crown Recycling & Waste Servs., Inc. v. Vill. of Lyons, 940 F. Supp. 1262 (N.D. Ill. 1996). A state court must provide sufficient judicial processes for resolving a breach of contract claim; otherwise, federal due process is not met, Hughes v. White, 467 F. Supp. 2d 791 (S.D. Ohio 2006), aff'd sub nom. Hughes v. Zurz, 298 F. App'x 404 (6th Cir. 2008). A state only guarantees due process if it provides a sufficient forum for a remedy through a breach of contract action in state court, Cross Continent Dev., LLC v. Town of Akron, Colo., 742 F. Supp. 2d 1179 (D. Colo. 2010). The Indiana state courts violated this standard because they claimed to provide a judicial process and forum for the Petitioner's claim that the Respondent breached the parties' contract. However, the state courts then refused to uphold the Petitioner's clear rights under the Settlement Agreement, undermining the due process guarantee that this Court should uphold, affirming the principles of law articulated by other lower courts, *e.g.*, S & D Maint. Co. v. Goldin, 844 F.2d 962 (2d Cir. 1988) (noting enforceable contract rights are in part protected by Fourteenth Amendment though constitutional right was not intended to shift the whole of the public law of the states into the federal courts on this ground); Kaminski v. Coulter, 865 F.3d

339 (6th Cir. 2017) (state breach of contract action may provide adequate remedy for some deprivations of a contractually created property interest but only provision of adequate remedy and forum to obtain satisfies due process guarantee).

Indeed, the Indiana state courts acknowledge similar principles but chose not to enforce them in this case. The Indiana courts have noted that federal constitutional law determines whether an interest in property rises to the level of entitlement protected by the Due Process Clause. Reed v. Schultz, 715 N.E.2d 896 (Ind. Ct. App. 1999).

The Court should also grant certiorari to clarify the extent to which state court actions, such as in Petitioner’s case below, implicate rights protected by the first clause of Article 1, Section 10 of the United States Constitution, which provides, in relevant part, “No state shall ... pass any ... Law impairing the Obligation of Contracts[.]” The Contract Clause “restricts the power of States to disrupt contractual arrangements” and applies to “any kind of contract,” this Court has said. Sveen v. Melin, 584 U.S. 811, 818, 138 S.Ct. 1815, 201 L.Ed.2d 180 (2018). Under the Contract Clause, “[t]he threshold issue is whether the state law has ‘operated as a substantial impairment of a contractual relationship.’” Sveen, 584 U.S. at 819, 138 S.Ct. 1815 (quoting Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 244, 98 S.Ct. 2716, 57 L.Ed.2d 727 (1978)).

The state courts further undermined both due process and Contract Clause rights because the appeals court applied an abuse of discretion standard of review to critical trial court decisions that threaten to impair a party’s Contract Clause and related due process rights. This effectively imposes an unreasonable burden of proof that does not guarantee

a fair outcome that upholds contract rights as unambiguously intended.

The Court should grant certiorari to review this area of law, clarifying the extent to which state court proceedings like Petitioner's can implicate the guarantees of the Contract Clause through state action that has significantly impaired a contractual relationship. The severity of the impairment is measured by factors that reflect the high value the Framers placed on protecting private contracts. The Court should clarify that when state action undermines a contractual bargain, interferes with a party's reasonable expectations under the contract, and prevents that party from enforcing their rights under it (e.g., City of Bloomington v. Smith, 252 N.E.3d 951 (Ind. Ct. App. 2025)), this implicates a person's Contract Clause rights protections. The state courts further impaired Petitioner's Contract Clause protections by compelling him to perform an affirmative act that the parties' contract does not require, and by saddling him with \$10,000 in legal fees for attempting to enforce the rights the parties' Settlement Agreement provided to him but which the courts refused to enforce. All these actions by the state court infringed upon the guarantees afforded by both the Due Process and Contract Clause; this Court should hold by grant of Certiorari here.

## **CONCLUSION**

The Court should grant this Petition for a Writ of Certiorari.

Respectfully submitted,

/s/ Michael Confusione

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Dated: July 1, 2025

1a  
Appendix A  
255 N.E.3d 444 (Table)  
(This disposition is referenced in the North  
Eastern Reporter.)  
Supreme Court of Indiana.  
Seth Adam LILLY, Appellant  
v.  
Melissa Ann LILLY  
April 9, 2025

Cause Number 24A-DC-510  
Pyle, J., May, J., Brown, J.

**Opinion**

Denied.

All Justices concur.

**All Citations**

255 N.E.3d 444 (Table)

1b  
Appendix B

Lilly v. Lilly, 248 N.E.3d 603 (2024)

248 N.E.3d 603 (Table)

Unpublished Disposition

(This disposition by unpublished memorandum decision is  
referenced in the North Eastern Reporter.)

Pursuant to Ind. Appellate Rule 65(D), this Memorandum  
Decision is not binding precedent for any court and may be  
cited only for persuasive value or to establish res judicata,  
collateral estoppel, or law of the case.

Court of Appeals of Indiana.

Seth Adam LILLY, Appellant-Respondent

v.

Melissa Ann LILLY, Appellee-Petitioner

Court of Appeals Case No. 24A-DC-510

Filed November 26, 2024

Appeal from the Vigo Superior Court, The Honorable  
Lakshmi Reddy, Judge, Trial Court Cause No. 84D02-2206-  
DC-3750

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MEMORANDUM DECISION

Pyle, Judge.

Statement of the Case

\*1 [1] Seth Lilly (“Husband”) and Melissa Lilly (“Wife”)  
(collectively “the parties”) entered into a settlement  
agreement (“the Settlement Agreement”) when their

marriage was dissolved in January 2023. In this post-dissolution proceeding, Husband appeals the trial court's orders that interpreted the Settlement Agreement and ordered him to pay Wife's attorney fees. Husband specifically argues that the trial court abused its discretion when it: (1) interpreted the Settlement Agreement; and (2) ordered him to pay Wife's attorney fees. Concluding that the trial court did not abuse its discretion, we affirm the trial court's judgment.

[2] We affirm.

#### Issues

1. Whether the trial court abused its discretion when it interpreted the Settlement Agreement.
2. Whether the trial court abused its discretion when it ordered Husband to pay Wife's attorney fees.

#### Facts

[3] Husband and Wife began dating in July 2015 and got married in July 2016. Their first son, J.L. ("J.L."), was born in April 2017, and their second son, H.L. ("H.L."), was born in February 2020.

[4] In June 2022, Husband and Wife were involved in a domestic dispute in the presence of J.L. and H.L. As a result of the dispute, in June 2022, the State charged Husband with Level 5 felony intimidation, Level 6 felony pointing a firearm, and Level 6 felony criminal recklessness. Also, in June 2022, the trial court issued an order prohibiting Husband from having contact with Wife, J.L., and H.L. Wife filed a dissolution petition that same month.

[5] In January 2023, Husband and Wife entered into the Settlement Agreement, which addressed the division of marital property and debt as well as custody, child support, visitation, and other child-related matters. Relevant to this appeal, the Settlement Agreement specifically provides as follows:

**Real Property.** The parties are joint owners of the real property commonly known as 239 N. Crews Place, West Terre Haute, IN 47885, consisting of a house and other

improvements on four (4) parcels of land [(“the marital residence”)]. Wife shall be awarded said real property and shall be solely responsible for, pay and keep current, any and all indebtedness thereon, holding Husband harmless therefrom. Wife shall assume the mortgage loan or obtain refinancing to remove Husband from the mortgage loan within six (6) months. In the event Wife is unable to assume the loan or obtain refinancing to remove Husband from the loan within six (6) months from the date of this agreement, then upon Husband's request, the property shall be placed immediately for sale and sold in order to remove Husband from the mortgage and note obligations. If the property is sold, Husband shall have the right of first refusal to purchase the property at fair market value. If Husband does not purchase the property, then he shall execute a Quit Claim Deed relinquishing all interest that he may have in conjunction with the refinancing or loan assumption or sale. Quit Claim Deed to be prepared by Wife's attorney. Husband shall cooperate with any attempts to refinance, assume or sell the marital residence.

\*2(App. Vol. 2 at 25).

[6] The Settlement Agreement also awarded Wife ownership of a 2020 Polaris Ranger (“the Polaris”). Further, pursuant to the terms of the Settlement Agreement, each party was required to cooperate to remove his or her name from the title of any vehicle awarded to the other party. The trial court approved the Settlement Agreement and dissolved the parties’ marriage on January 24, 2023.

[7] Two months later, in March 2023, Wife filed a petition for rule to show cause and attorney fees, wherein Wife alleged that Husband had refused to give her the title to the Polaris. According to Wife, Husband had refused to give her that title until she had refinanced the marital residence in her name. Wife asked the trial court to award her attorney fees for having to file a legal action to obtain the title for property awarded to her in the Settlement Agreement.

[8] One month later, in April 2023, while attempting to



purchase items for J.L.'s birthday at Sam's Club, Wife learned that Husband had cancelled her Sam's Club membership by impersonating her in an online chat with a Sam's Club representative. In addition to cancelling Wife's membership, Husband had had the \$110 membership fee refunded to his credit card. Husband had also had \$99 in Sam's Club reward dollars refunded to his credit card. When Wife asked Husband to pay her the membership fee and reward dollars, Husband refused to do so and told Wife that it was an issue that should be addressed through their attorneys.

[9] Also, in April 2023, Wife filed a verified petition for attorney fees. In the petition, Wife alleged that Husband had recently obtained a new counsel and had filed several motions containing hundreds of pages of filings and exhibits. According to Wife, Husband's motive for filing the motions was "clearly to rack up further expenses for [Wife] and try to deflect from his abhorrent behavior." (Appellee's App. Vol. 2 at 4). Wife further alleged that she had "spent a substantial amount of time and attorney fees having to have the court intervene in [Husband]'s relentless harassment and harmful behavior and defending herself against [Husband]'s frivolous claims in his several motions and/or responses." (Appellee's App. Vol. 2 at 4). Wife also alleged that Husband had made several misrepresentations to the trial court. She asked the trial court to award her attorney fees "in conjunction with all pending actions." (Appellee's App. Vol. 2 at 4).

[10] The following month, May 2023, when Wife had attempted to pay online a mortgage payment for the marital residence, Wife had learned that Husband had changed the login information for the mortgage account. When Wife asked Husband to give her the new login information, Husband had refused Wife's request. When Wife had asked Husband for the mortgage statement so that she could make the payment by mail, Husband had sent the statement to his attorney with instructions to send it to Wife's attorney.

[11] On July 21, 2023, Wife's counsel sent Husband's counsel an email advising him that Wife “ha[d] obtained financing for the residence[.]” (Ex. Vol. 1 at 64). Ten days later, on July 31, 2023, Husband's counsel sent Wife's counsel the following email: “Has [Wife] been able to obtain financing? [Husband] would like to purchase the marital residence for the appraisal amount. Let me know.” (Ex. Vol. 1 at 65). An hour later, Husband's counsel responded as follows to Wife's counsel's July 21, 2023, email: “What company did she obtain financing from? Do you have anything showing that she did? Was it within the 6 month window?” (Ex. Vol. 1 at 64).

\*3 [12] On August 4, 2023, a representative from a title company (“the representative”) sent Husband an email advising him that she was working with Wife on the refinancing of the marital residence. The representative told Husband that she needed him to sign and have notarized the documents, including a quitclaim deed that she had attached to the email. Husband never responded to the representative's email or signed the documents.

[13] Six days later, on August 10, 2023, Husband's counsel emailed Wife's counsel and asked her if she had ever obtained the proof that Wife had “refinanced within 6 months.” (Ex. Vol. 1 at 69). Wife's counsel responded that Wife could not finalize the refinancing of the marital residence until Husband had signed the necessary documents, which Husband had refused to do. Wife's counsel further pointed out that, pursuant to the Settlement Agreement, Wife had been “required to obtain financing in 6 months, not refinance completely.... She did not have to provide proof of the same, even though it's attached.” (Ex. Vol. 1 at 68). Wife's counsel attached to her email a one-page “Summary of Findings” document (“the summary of findings document”), which included Wife's name as the borrower, the July 21, 2023, submission date, and the recommendation as “Approve/Eligible[.]” (Ex. Vol. 1 at 71). Wife's counsel further told Husband's counsel that Wife would be filing for

sanctions if Husband did not immediately cooperate and sign the necessary documents so that Wife could complete the refinancing of the marital residence.

[14] On August 15, 2023, Husband's counsel responded that from looking at the summary findings document, he could not conclude that Wife had timely obtained financing for the marital residence. Husband's counsel also asked Wife's counsel what type of loan Wife had obtained and what documents required Husband's signature.

[15] Wife's counsel responded that Wife had completed her part of the refinancing and that the title company was waiting for Husband to sign the quitclaim deed. Wife's counsel further responded that the Settlement Agreement had not required Wife to provide Husband with information regarding the type of loan, the terms of the loan, or the interest rate. According to Wife's counsel, the only information that Husband would receive was that Wife had obtained financing on July 21, 2023.

[16] On August 28, 2023, the trial court held the first day of a two-day hearing on all pending motions and petitions. Following the hearing that day, Wife filed a petition for rule to show cause and for attorney fees. In the petition, Wife alleged that she had obtained the necessary financing for the marital residence within the six-month time period set forth in the Settlement Agreement and that Husband had refused to execute the documents required to remove him from the mortgage. Wife specifically alleged that she had been scheduled to close on the marital residence on August 25, 2023. However, that closing had been cancelled because Husband had refused to execute the required documents. Wife further alleged that Husband had purchased a residence following the dissolution of the parties' marriage and had no reason "to obstruct [Wife]'s ability to take over the mortgage other than his attempt to maintain control over [Wife]." (App. Vol. 2 at 36).

[17] Two days later, on August 30, 2023, Husband filed a response to Wife's petition, which he alleged was "without

merit[.]” (App. Vol. 2 at 40). In this petition, Husband alleged that pursuant to an August 16, 2023 email from Wife's loan officer (“the loan officer”), “the first step in any loan process is to get approved/eligible with the automated underwriting system based on the applicant's application.” (App. Vol. 2 at 40). Husband further alleged that the loan officer had explained that additional steps had to be completed in order to verify the accuracy of the information that Wife had submitted. Although the loan officer had stated that this step had been completed, the loan officer had not stated the completion date. According to Husband, the loan officer had further stated that Wife's insurance information had to be updated before the process could be completed.

\*4 [18] On August 30, 2023, Husband also filed a petition for rule to show cause and for attorney fees. In this petition, Husband alleged that Wife had failed to assume the mortgage loan and had failed to obtain refinancing within the specified six-month deadline. Husband asked the trial court to order the sale of the marital residence and to allow him the right of first refusal to purchase it.

[19] The day after Husband had filed his response to Wife's petition and his petition, the trial court held the second day of the hearing on the pending motions and petitions in this case. At the hearing, Wife testified about the events set forth above that had occurred following the dissolution of the parties' marriage. Wife further testified that she had been scheduled to close on the marital residence the previous week, but Husband had refused to sign the required documents, including the quitclaim deed. Wife also testified that no closing could occur until Husband signed the required documents and that her interest rate was scheduled to expire in September.

[20] Thereafter, the trial court stated that it was going to appoint Husband's counsel as a commissioner to sign the documents on Husband's behalf. Husband's counsel responded that Husband “would like to present his case in

regard to this.” (Tr. Vol. 3 at 43). The trial court asked Husband if he was going to sign the documents, and Husband responded that Wife “didn't get financing within the one hundred eighty (180) days, so no, I'm not going to sign it.” (Tr. Vol. 3 at 44).

[21] Wife further testified that during the course of the parties' marriage, Husband, who has been employed at the federal prison in Terre Haute for the past eighteen years and who has the opportunity to work overtime, typically earned 70% of the family's income. Wife, who is employed as an office manager and who does not have the opportunity to work overtime, typically earned 30% of the family's income. In 2022, Husband earned \$77,000 while spending several months on paid leave after the State had filed the criminal charges against him in June 2022. Based on the parties' incomes at the time of the hearing, Husband was on track to earn 80% of the parties' 2023 joint income. Specifically, at the time of the hearing, Husband had already earned \$115,000 in 2023 and was projected to earn \$193,000. Wife's annual salary is approximately \$50,000.

[22] Also, during Wife's testimony, Wife's counsel asked Wife if she believed that she had spent an excessive amount of attorney fees responding to Husband, responding to Husband's counsel, appearing at hearings, and filing pleadings because of Husband's behavior. Wife responded, “Yes, because everything we are arguing about right now is signed in our settlement agreement on January 24th.” (Tr. Vol. 3 at 57).

[23] Wife asked the trial court to order Husband to pay her attorney fees from the time of the dissolution of the parties' marriage until that day of the hearing. Wife's counsel tendered to the trial court an affidavit for attorney fees, wherein Wife's counsel stated that her hourly rate was \$275. Wife's counsel further stated that since January 24, 2023, the date of the dissolution of the parties' marriage, Wife had incurred \$23,053.25 in attorney fees, which included a \$10,000 fee reduction.

[24] In September 2023, the trial court issued a detailed sixteen-page order on the petitions and motions addressed during the two-day August 2023 hearing. The issues addressed in the order included parenting time, child support, attorney fees, and the interpretation of the Settlement Agreement. Relevant to this appeal, the trial court found as follows:

\*5 The agreement provides that [Wife] shall assume the mortgage or refinance to remove Husband's name within six (6) months which means it was supposed to be accomplished by July 24, 2023. The evidence submitted demonstrates that on July 21, 2023, [Wife]'s Counsel sent [Husband]'s Counsel an email advising that [Wife] “has obtained the financing for the residen[ce] ....” On July 31, 2023, at 8:48 a.m., [Husband]'s Counsel inquires whether [Wife] has been able to obtain financing and then states that [Husband] “would like to purchase the marital residence for the appraisal amount.” [Husband] contends that [Wife] did not refinance within six (6) months and so he is entitled to purchase the home. However, the Court does not find that to be a plain reading of the terms of the agreement. If [Wife] was unable to refinance within six (6) months, then upon [Husband]'s request, the property is placed for sale and then [Husband] has the right of first refusal to purchase the marital residence at fair market value, not the appraised value. This Court's interpretation is that [Husband] only had a right to purchase after the house was placed for sale and then he had a right of first refusal. However, the Court sees no evidence that [Husband] ever requested that the house be placed for sale so he does not yet have an option for first right of refusal at the fair market value. Since [Wife] has refinanced and was prepared to close on August 25, 2023, and is still prepared to close, the Court orders that she proceed in the refinancing so that [Husband]'s name can be removed. Because the Court is concerned that [Husband] will not cooperate to ensure this is accomplished, by separate Order the Court has appointed Attorney Jon Spur to be a

Commissioner to sign on behalf of [Husband] so that this matter can be resolved without any further delay and/or conflict....

The Court also observes that the evidence reveals that [Husband] already purchased a home back in April of 2023. And yet, several months later he challenges whether [Wife] obtained financing and suggests he wishes to purchase the home. His attempt to keep [Wife] from being able to close on the refinance and ultimately seek to prevent the children from remaining in the home that they have been raised in does not create a favorable impression aside from all the other issues that have arisen in this case.

(App. Vol. 2 at 44-45) (emphasis in original).

[25] The trial court also ordered Husband to pay Wife's attorney fees. However, because Husband had not had the opportunity to question Wife's counsel on the reasonableness of both her hourly rate and the fees set forth in her affidavit, the trial court scheduled another hearing to further address the attorney fee issue.

[26] In October 2023, Husband filed a motion to correct error. He argued that the trial “[c]ourt's finding that ... ‘the Court sees no evidence that [Husband] ever requested that the house be placed for sale so he does not yet have an option or first right of refusal at the fair market value’ is not supported by the evidence.” (App. Vol. 2 at 63). According to Husband, “... on July 31, 2023, ... [Husband]'s counsel inquired about the marital residence by stating [Husband] ‘would like to purchase the marital residence for the appraisal amount.’ This court err[ ]ed by failing to interpret [Husband]'s inquiry as his request to sale [sic] the property because stating that he wants to purchase it is the same as requesting it be sold, but to him.” (App. Vol. 2 at 63). The trial court denied Husband's motion to correct error.

[27] Following a January 2024 hearing, the trial court found as follows regarding Wife's request for attorney fees:

The Court finds that the attorney fee request of \$23,053.23 which was for post-dissolution services through the [August]

hearings to be reasonable and were incurred due to [Husband]'s behavior and actions/inactions. If not for the repeated hearings to address [Husband]'s behavior, it is unlikely that [Wife] would have incurred these fees. In addition, there is a large discrepancy in incomes and [Husband] is in a position to afford these fees and is in a position to continue to earn additional income. [Wife] is awarded those attorney fees.

(App. Vol. 2 at 78).

[28] Husband filed his notice of appeal on March 1, 2024. In June 2024, Wife filed in the trial court a petition asking the trial court to order Husband to pay for her appellate attorney fees. On July 31, 2024, five days after Wife had filed her appellee's brief in this appeal, the trial court ordered Husband to pay \$10,000 towards Wife's appellate attorney fees. The trial court's order specifically provides as follows: To order otherwise would prevent [Wife] from having equal access to the Courts, the ability to continue with legal representation and the evidence demonstrates a large disparity in income where [Husband] also has the means to pay for these costs. The unfortunate reality is that the parties have now spent more in attorney fees th[a]n it would probably cost for one of their children to attend 4 years of college.

\*6 (Supp. App. Vol. 2 at 5). Wife has not filed a supplemental request for additional attorney fees.

#### Decision

[29] In this appeal, Husband argues that the trial court abused its discretion when it: (1) interpreted the Settlement Agreement; and (2) ordered Husband to pay Wife's attorney fees. We address each of his contentions in turn.

[30] At the outset, we note that there is a well-established preference in Indiana for granting latitude and deference to the trial court in family law matters. *Steele-Giri v. Steele*, 51 N.E.3d 119, 124 (Ind. 2016). “Appellate courts are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses,



observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence.” *Id.* (cleaned up). “On appeal it is not enough that the evidence might support some other conclusion, but it must positively require the conclusion contended for by appellant before there is a basis for reversal.” *Id.* (cleaned up). “Appellate judges are not to reweigh the evidence nor reassess witness credibility, and the evidence should be viewed most favorably to the judgment.” *Id.* (cleaned up).

[31] We further note that neither party requested special findings under Indiana Trial Rule 52(A) and that the trial court entered its findings sua sponte. As to the issues covered by the findings, we apply the two-tiered standard of whether the evidence supports the findings and whether the findings support the judgment. *McDaniel v. McDaniel*, 150 N.E.3d 282, 289 (Ind. Ct. App. 2020), trans. denied. We review any remaining issues under the general judgment standard and will affirm the judgment if it can be sustained on any legal theory consistent with the evidence. *Id.* “We may look both to other findings and beyond the findings to the evidence of record to determine if the result is against the facts and circumstances before the court.” *Id.* (cleaned up). Clear error occurs when our review of the evidence most favorable to the trial court's judgment leaves us firmly convinced that a mistake has been made. *Quinn v. Quinn*, 62 N.E.3d 1212, 1220 (Ind. Ct. App. 2016). We now turn to the issues in this case.

#### 1. Interpretation of the Settlement Agreement

[32] Husband first argues that the trial court abused its discretion when it interpreted the Settlement Agreement. He specifically contends that, “[t]he trial court concluded that Husband ‘only had a right to purchase after the [Marital Residence] was placed for sale and then he had a right of first refusal.’ This is a misreading of the Settlement Agreement, which does not restrict Husband's ability to purchase the Marital Residence to exercising a right of first

refusal.” (Husband's Br. 15-16) (citation omitted).

[33] We review a trial court's interpretation and enforcement of a settlement agreement for an abuse of discretion. *Herber v. Bunting*, 194 N.E.3d 1142, 1145 (Ind. Ct. App. 2022). An abuse of discretion occurs if the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law. *Id.*

\*7 [34] Parties to a dissolution may negotiate their own property settlement agreements and incorporate them into a dissolution agreement. *Id.* Such settlement agreements, if approved by the trial court, are binding contracts, which are interpreted according to the same general rules applicable to other types of contracts. *Id.* “Where terms of a contract are clear and unambiguous, we will apply the plain and ordinary meaning of the terms and enforce the contract according to its terms.” *John M. Abbott, LLC v. Lake City Bank*, 14 N.E.3d 53, 56 (Ind. Ct. App. 2014). We further note that the trial court that enters a settlement agreement is in the best position to resolve questions of interpretation and enforcement of that agreement. *Fackler v. Powell*, 839 N.E.2d 165, 167-68 (Ind. 2005).

[35] At the outset, we note that we agree with Husband that Wife did not timely obtain refinancing. Specifically, the summary of findings document that Wife submitted as proof that she had timely obtained refinancing simply states that Wife applied for refinancing on July 21, 2023 and that her application had been approved. However, as Husband points out, additional steps, such as verifying the information on Wife's application and updating her insurance information, were required before Wife actually obtained the required refinancing.

[36] Pursuant to the unambiguous terms of the Settlement Agreement, if Wife did not timely obtain refinancing, Husband was required to request that the marital residence be immediately placed for sale. Further, once the marital

residence had been placed for sale, Husband had the right of first refusal to purchase the property at fair market value.

[37] Our review of the record reveals that upon learning that Wife had not timely obtained refinancing, Husband did not request that the marital residence be immediately placed for sale. Rather, his counsel simply sent Wife's counsel an email expressing Husband's interest in purchasing the marital residence for the appraised value. Husband's expression of interest was not a request that the marital residence be immediately placed for sale, and the Settlement Agreement used the term fair market value and not appraised value. Further, even if Husband had requested that the marital residence be immediately placed for sale, pursuant to the plain language of the Settlement Agreement, Husband had only the right of first refusal to purchase the property. As a result, the trial court did not abuse its discretion in interpreting the Settlement Agreement.

[38] We further note that by the time of the August 2023 hearing, the trial court was faced with two parties who had failed to comply with the terms of the Settlement Agreement. Although Wife had not timely obtained refinancing pursuant to the terms set forth in the Settlement Agreement, by the time of the August 2023 hearing, she had obtained the refinancing and was ready to close on the marital residence. However, Husband was refusing to sign the required documents, which was another violation of the Settlement Agreement. In light of the fact that Husband had already purchased a home, and because allowing Wife to proceed with the closing would allow the children to remain in the home in which they had been raised, the trial court ordered Wife to proceed with the closing so that Husband's name would be removed from the mortgage. The trial court also appointed a commissioner to sign on Husband's behalf so that this matter could be resolved without any further delay or conflict. We conclude that the trial court fashioned a reasonable enforcement of the Settlement Agreement and did not abuse its discretion.

## 2. Attorney Fees

\*8 [39] Husband also argues that the trial court abused its discretion when it ordered him to pay Wife's attorney fees. In post-dissolution proceedings, the trial court may order a party to pay a reasonable amount for attorney fees. *Bessoli v. Rosario*, 966 N.E.2d 725, 733 (Ind. Ct. App. 2012), trans. denied. The trial court has broad discretion in awarding attorney fees. *Id.* We will reverse the trial court's decision only where it is against the logic and effect of the facts and circumstances before the court. *Id.*

[40] In assessing attorney fees, the court may consider such factors as the resources of the parties, the relative earning ability of the parties, and other factors that bear on the reasonableness of the award. *Himes v. Himes*, 57 N.E.3d 820, 830 (Ind. Ct. App. 2016), reh'g denied, trans. denied. In addition, any misconduct on the part of one of the parties that directly results in the other party incurring additional fees may be taken into consideration. *Id.*

[41] Here, our review of the trial court's order reveals that the trial court considered the resources of the parties as well as their relative earning abilities. The trial court also concluded that Husband's misconduct justified an award of attorney fees to Wife. These proper considerations support the trial court's attorney fee order. We find no abuse of the trial court's discretion.<sup>2</sup>

[42] Affirmed.

May, J., and Brown, J., concur.

All Citations

248 N.E.3d 603 (Table), 2024 WL 4887564

Footnotes

1 Husband and Wife agree that pursuant to the terms of the Settlement Agreement, Wife was required to obtain financing for the marital residence by July 24, 2023.

2 On cross-appeal, Wife asks us to award her appellate attorney fees pursuant to Indiana Appellate Rule 66(E). However, as Husband points out in his appellate reply brief, the trial court has already ordered Husband to pay \$10,000

towards Wife's appellate attorney fees. Because the trial court has already addressed this issue and because Husband does not challenge this award of appellate attorney fees, in our discretion, we deny the request for additional appellate fees.