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ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-21-281

JAMIE CLARK

APPELLANT

V.

STEVE CLARK

APPELLEE

Opinion Delivered May 11, 2022

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT,
FORT SMITH DISTRICT
[NO. 66FDR-19-705]

HONORABLE ANNIE POWELL
HENDRICKS, JUDGE

AFFIRMED

BART F. VIRDEN, Judge

Appellant Jamie Clark and appellee Steve Clark were divorced by decree entered by the Sebastian County Circuit Court. Pursuant to a property-settlement agreement (“PSA”), Steve agreed to pay Jamie a substantial sum of money.¹ Jamie filed a petition for citation of

¹The parties’ PSA contains a separate section on confidentiality, which features prominently in this appeal:

[Steve] and [Jamie] acknowledge that this matter has been sealed by the Court. Further, each acknowledges that confidentiality is of the utmost importance by and between them regarding division of the marital estate. The parties recognize that confidentiality is a material component of their agreement. [Steve] and [Jamie] agree that they will not share the terms of their agreement with any non-party to this action.

This court has endeavored to minimize the information that becomes public record in order to honor the confidentiality aspect of the parties’ agreement and in observance of the fact that this case has been filed under seal, while still dealing with the issues presented on appeal.

contempt after Steve refused to sign documents that she asserted are necessary to secure her interest in Steve's separate property until he pays his financial obligation in full. The trial court denied Jamie's petition. Jamie argues on appeal that the PSA provides her with the right to have a security interest in Steve's real property and business entities. We affirm.

I. *Background*

The parties' PSA was incorporated, but not merged, into the divorce decree entered March 16, 2020. The PSA is said to be "fully enforceable by any court of competent jurisdiction as a judgment against both parties, in addition to any other rights enforceable by Circuit Court." A section titled "Binding Effect of Agreement" states that the provisions of the PSA shall not be modified or changed except by mutual consent and agreement of the parties and that the parties intend for the PSA to be an independent contract that resolves all rights, titles, and claims existing between the parties.

Pursuant to section I of the PSA, the parties divided both real and personal property. The real property includes the marital home, large tracts of land, and several residences and vacation homes. The agreement discloses information about the indebtedness on the properties and provides that Steve will pay off within five years any indebtedness on certain properties that have been designated as Jamie's separate property. The PSA also provides that Steve will remove Jamie's name from a mortgaged property that he received as his separate property. The parties further agreed to execute quitclaim deeds and other documents transferring their interest in the properties. There is a separate provision in the PSA that the parties must execute all documents within ninety days of the execution of the PSA; however, in some instances, the parties agreed to sign deeds and documents within

thirty days. On the other hand, with respect to certain properties that Steve received as his separate property, the parties agreed that Jamie will sign the necessary documents transferring her interest when such documents are presented to her.

Under the personal-property section, the PSA lists approximately thirty business entities that Steve received as his separate property. Further, subsection E provides that Steve will pay Jamie a large sum of money in order “to equalize the property division.” The language at issue in this appeal provides that

[t]his obligation shall be secured by [Steve]’s interest in the real property and business entities he receives as his separate property, to be subordinated only to [Steve]’s financing creditors necessary to maintain the operation of said business entities as ongoing concerns.^{2]}

On October 13, 2020, Jamie’s counsel sent to Steve’s counsel an email to which he attached documents related to the separate property that Steve received pursuant to the PSA. Specifically, Steve was asked to sign mortgages on multiple residences and an out-of-state tract of land; a security agreement with power of sale with respect to the business entities; and an affidavit promising to live up to his obligations in the PSA. Steve’s counsel responded that these matters were covered in the PSA and that Steve would not sign any additional documents.

On November 16, Jamie filed a petition for citation of contempt. After noting that Steve’s financial obligation “shall be secured” per the PSA, Jamie pointed to the section on

²Jamie argues in her reply brief that this language about subordination to Steve’s financing creditors demonstrates that perfection of her security interest is contemplated by the parties’ PSA; however, we will not consider an argument made for the first time in a reply brief because the appellee has no opportunity to respond. *Orientas v. Point Lookout Prop. Owners Ass’n Bd. of Dirs.*, 2015 Ark. App. 648, 476 S.W.3d 174.

confidentiality and asserted that “the PSA itself does not provide any notice to any third party of [Jamie]’s security interest in [Steve]’s real property and business entities.” According to Jamie, Steve wrongfully refused to sign documents to formally establish her security interest in his real properties and business entities. Jamie refers to that section of the PSA, which provides that the parties “shall execute all documents necessary to effectuate this Agreement within 90 days of execution of same” to support her allegation that Steve has violated the PSA.³

Following a hearing at which the trial court heard arguments from counsel, the trial court entered an order denying Jamie’s petition for contempt. The trial court pointed out that the divorce decree provides that the PSA “further resolves, by contract between the parties, each parties’ property interests and debt obligations, which Agreement is made an order of this Court.” The trial court found that both parties were represented by legal counsel, that discovery and the exchange of documents were completed prior to the execution of the PSA, and that the trial court’s duty was to enforce the PSA as written. The trial court also found the following:

Some seven months after the Decree of Divorce and the Court’s adoption of the PSA between the parties, [Jamie], through counsel, demanded that [Steve] sign additional documents including real estate mortgages and security agreements. These documents were neither required nor contemplated by the PSA. Moreover, in the Court’s opinion, they are not necessary for [Jamie] to have security with respect to

³Both parties rely on this section. Jamie contends that the fact that Steve refused to sign mortgages and financing statements within ninety days is evidence of his breach, while Steve points out that Jamie failed to present these documents until seven months after execution of the PSA. This provision is not particularly helpful to either party because the PSA contemplates documents being signed beyond the so-called ninety-day limit. For example, Jamie will sign quitclaim deeds when they are presented to her—up to eight years after execution of the PSA once Steve has paid in full the financial obligation in subsection E.

[Steve]’s obligations imposed with the PSA. As stipulated by [Jamie] in open court, [Steve] has timely made all payments required by the PSA, and [Jamie] has offered no evidence that will not continue into the future. [Jamie]’s Petition for Citation of Contempt is without merit and is dismissed with prejudice.

II. *Standard of Review*

Willful disobedience of any valid judgment, order, or decree of a court having jurisdiction to enter it may constitute contempt, and punishment for such contempt is an inherent power of the court. *Moody v. Moody*, 2017 Ark. App. 582, 533 S.W.3d 152. A separate and independent property-settlement agreement that has been incorporated into a divorce decree leaves a trial court without authority to modify the agreement; rather, the issue of how to interpret the agreement is based on an analysis of the contract language. *Rowan v. Rowan*, 2022 Ark. App. 143, 643 S.W.3d 62. Questions relating to the construction, operation, and effect of independent property-settlement agreements are ordinarily governed by the rules and provisions applicable to other contracts generally. *Id.* The first rule of interpretation of a contract is to give to the language employed the meaning that the parties intended. *Id.* In construing any contract, we must consider the sense and meaning of the words used by the parties as they are taken and understood in their plain and ordinary meaning. *Id.* It is also a well-settled rule in construing a contract that the intention of the parties is to be gathered, not from particular words and phrases, but from the whole context of the agreement. *Id.* Further, a contract should be construed so that all of its parts are in harmony, if that is possible. *Carter v. Cline*, 2011 Ark. 474, 385 S.W.3d 745. In seeking to harmonize different clauses of a contract, we should not give effect to one clause to the exclusion of another even though they seem conflicting or contradictory, nor adopt an interpretation which neutralizes a provision, if the various clauses can be

reconciled. *Morris v. Knopick*, 2017 Ark. App. 225, 521 S.W.3d 495. When a contract is unambiguous, its construction is a question of law for the court, and the intent of the parties is not relevant. *Hargis v. Hargis*, 2018 Ark. App. 469, 561 S.W.3d 336. When contracting parties express their intention in a written instrument in clear and unambiguous language, it is the court's duty to construe the writing in accordance with the plain meaning of the language employed. *Buckingham v. Gochnauer*, 2017 Ark. App. 660, 536 S.W.3d 155.

III. Discussion

Jamie argues that the trial court must have found that the PSA was unambiguous because it declined to hear her testimony about the meaning of the phrase “[t]his obligation shall be secured” Jamie provides definitions for all variations of the word “secure,” which she maintains implicates Arkansas’s Uniform Commercial Code (“UCC”). As for Steve’s real property, Jamie argues that she must have a mortgage in order to be secured and that a mortgage must be recorded to provide notice to all persons of its existence. As for Steve’s various corporations, Jamie contends that her interest must attach and be perfected, meaning a security agreement or financing statement must be filed. According to Jamie, without recorded mortgages and filed financing statements, she is not protected if Steve files for bankruptcy or sells his property to a good-faith purchaser. She further argues that because the PSA is sealed, any constructive-notice argument would fail because no one but the parties know the terms of the PSA. Finally, Jamie argues that her interests are not secured by the fact that Steve has thus far made timely payments or because she may seek judicial relief. She maintains that Steve’s argument in this regard seeks to limit her remedies. Jamie

argues that, even though she may seek enforcement through contempt or by suing for breach of contract, her unsecured interest would nevertheless be lost.

The PSA was specific in terms of the necessity of executing certain documents in dividing the parties' real property. There is no such similar specificity in subsection E dealing with Steve's financial obligation. If the parties had intended for Jamie to have publicly recorded mortgages and filed financing statements to secure her interest,⁴ the PSA would have so provided, and the confidentiality section would not have been included as a "material component" of the "utmost importance" to the agreement.⁵ The PSA provides simply that Steve's payment of the financial obligation "shall be secured" by Steve's interest in the real properties and business entities that he received as his separate property.

Subsection E provides that "[Jamie] shall retain her one-half (1/2) ownership interest in the business entities taken by [Steve] as his separate property until such time as she has been paid, in full, on this financial obligation." The next subsection provides that "[Jamie] shall further be named as sole beneficiary of [Steve]'s current life insurance policies up to the outstanding balance owed herein, until the final payment has been received as set forth in the preceding paragraphs" Reading separate provisions harmoniously, Jamie will not transfer her interests in the real property and business entities that will be Steve's separate

⁴We note that the mortgages and financing statements that Jamie sought to have Steve sign impose additional obligations on Steve when the PSA purports to be the document that resolves all of their claims and rights in the dissolution of their marriage.

⁵The question of what effect the execution of quitclaim deeds has on the confidentiality of the PSA, should those deeds be recorded, is not an issue on appeal.

property until he has paid in full the financial obligation in subsection E and presented her with the necessary documents to effectuate the transfer.

In other words, Steve will not be able to sell, or otherwise enjoy, certain “separate” property because Jamie will retain a one-half interest in that “separate” property until Steve satisfies the financial obligation as set forth in the PSA. We agree with the trial court that Steve’s payment of the financial obligation is secure. Not only does Jamie continue to have an ownership interest in Steve’s real property and business entities, she is sole beneficiary of his life-insurance policies up to the amount of his obligation. Moreover, the PSA itself is a judgment, and Jamie may sue Steve for breach of contract and ask that Steve be held in contempt if he fails to satisfy, or acts contrary to the satisfaction of, the financial obligation. The terms of this PSA were negotiated by the parties through competent legal counsel.

We cannot say that the trial court erred in finding that Steve’s financial obligation to Jamie is secured through the PSA’s provisions and the court’s decree and that Steve was not in contempt for refusing to sign mortgages and financing statements that were not contemplated by the PSA.

Affirmed.

WHITEAKER and MURPHY, JJ., agree.

Taylor Law Partners, LLP, by: *Rick Woods* and *Andrew Myers*, for appellant.

Hardin, Jesson & Terry, PLC, by: *Kirkman T. Dougherty* and *Rex M. Terry*; and *Medlock & Gramlich, LLP*, by: *Jered M. Medlock*, for appellee.