MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

David J. Black and William O. Harrington,

Appellants

v.

Martha A. Vaughn and Curtis E. Shirley,

Appellees

March 2, 2026

Court of Appeals Case No.
25A-DR-1244

Appeal from the Hendricks Superior Court

The Honorable Matthew C. Kincaid, Special Judge

Trial Court Cause No.
32D03-0910-DR-124

Memorandum Decision by Judge Bradford
Judges Pyle and Kenworthy concur.

Bradford, Judge.

Case Summary

[1] David Black and Martha Vaughn were previously married, with their marriage having been dissolved on April 7, 2005. Pursuant to the parties' divorce decree, Black was ordered to transfer certain retirement funds to Vaughn. Black, however, did not do so and, in October of 2021, Vaughn initiated legal proceedings to collect her share of the retirement funds.

[2] The parties entered into a settlement agreement ("the Agreement") on June 1, 2023. According to the terms of the Agreement, Black agreed to transfer $1,255,000.00 from his retirement funds to Vaughn. In order to complete the transfer, Black and his counsel were required to draft and submit all necessary documents with the trial court and the investment firm within five days. Black did not satisfy his contractual obligations in a timely manner, requiring additional legal proceedings. In fact, Black did not satisfy his legal obligations stemming from the parties' divorce decree until April 18, 2024, approximately ten and one-half months after the parties had entered into the Agreement.

[3] The parties continued to litigate the issues of interest and attorney's fees, with both sides moving for summary judgment. In May of 2025, the trial court granted Vaughn's motion for summary judgment, finding that pursuant to the Agreement, she was entitled to interest and attorney's fees. The trial court also awarded Vaughn's prior counsel, Curtis E. Shirley, sanctions against Black and his counsel, William O. Harrington, after Black and Harrington had attempted

to have Shirley held personally responsible for some of Harrington's underlying legal fees.

[4] Black challenges the trial court's award of summary judgment and attorney's fees to Vaughn, and Black and Harrington collectively challenge the trial court's award of attorney's fees to Shirley. Vaughn and Shirley each request appellate attorney's fees, arguing that Black's (and Harrington's) appeal was not brought in good faith. We affirm the judgment of the trial court and deny Vaughn's and Shirley's requests for appellate attorney's fees.

Facts and Procedural History

[5] Black and Vaughn were married on July 24, 1982. Their marriage was dissolved on April 7, 2005. At the time of the parties' dissolution, Black "owned two (2) Fidelity Keogh accounts: a Profit Sharing Plan … and a Money Purchase Plan … (hereinafter collectively, the 'Keogh Accounts[.]')" Appellants' App. Vol. II p. 172. According to the terms of their divorce decree, Vaughn "was entitled to receive 65% of the Keogh Accounts … plus or minus market force appreciation or depreciation from that date until the date of transfer to [Vaughn]" and transfer to Vaughn "shall be accomplished by the most expeditious means reasonably available, such as a Qualified Domestic Relations Order (hereinafter, the 'QDRO')." Appellants' App. Vol. II p. 172. As of the date of dissolution of the parties' marriage, Vaughn's share of the Keogh Accounts was valued at $306,303.00 "plus or minus market force

appreciation and/or depreciation on said amount from [January 31, 2004] to the date of transfer." Appellants' App. Vol. II pp. 68–69.

[6] Black failed to transfer Vaughn's share of the Keogh Accounts to Vaughn for many years. Eventually, in October of 2021, Vaughn initiated legal proceedings to establish a QDRO and to facilitate transfer of Vaughn's share of the Keogh Accounts to Vaughn. Vaughn alleged that Black, as the Keogh Plan Administrator, had failed "to complete and sign two short simple documents before Fidelity would transfer funds to" Vaughn. Appellants' App. Vol. II p. 103. In response to this action, the parties entered into the Agreement on June 1, 2023.

[7] According to the terms of the Agreement, Black agreed to transfer $1,255,000.00 from his Keogh investment accounts to Vaughn "on or before Friday, July 14, 2023." Appellants' App. Vol. II p. 174. Pursuant to the Agreement, Black and his counsel were required to draft and submit to the trial court and Fidelity Investments "all documents and proposed orders required to effectuate the distribution within five (5) days." Appellants' App. Vol. II p. 174. The Agreement provided that, should Black fail to complete the transfer to Vaughn "on or before July 14, 2023, based upon a finding by the [trial court] that [Black] has caused or materially contributed to any delay, [Black] shall pay [Vaughn] eight percent (8%) per annum on the undistributed amount (equating to $275.00 per day) until the date of funding." Appellants' App. Vol. II p. 175. The Agreement further provided that "[i]f [Vaughn] or [Black] initiates any legal or equitable action to enforce the terms of this Agreement, the prevailing

party in such a proceeding shall recover his or her reasonable attorney's fees, expert witness fees, costs, and all other expenses from the non-prevailing party." Appellants' App. Vol. II p. 178.

[8] Black failed to transfer the funds to Vaughn by July 14, 2023, as required by the Agreement.[1] On October 12, 2023, Vaughn moved to compel Black's compliance with the Agreement.

[9] On February 22, 2024, the parties filed a joint motion requesting the trial court to issue the "jointly approved … First Amended [QDRO]". Appellants' App. Vol. V. p. 167. The First Amended QDRO reaffirmed that the sum due was $1,255,000.00 and indicated that the funds were to be transferred from Black's Keogh Accounts. The trial court approved the First Amended QDRO on March 6, 2024. On April 18, 2024, Vaughn's counsel notified Black's counsel that Vaughn had "received confirmation today that her retirement account" had been funded. Appellants' App. Vol. VI p. 119.

[10] Citing the Agreement, Vaughn requested interest and attorney's fees, and, on June 19, 2024, moved for summary judgment on her request. Black filed a cross motion for summary judgment on August 19, 2024, also seeking attorney's fees. The trial court held a hearing on the parties' competing summary-judgment motions on March 6, 2025. On May 8, 2025, the trial court

[1] Vaughn asserts that in failing to transfer the funds in question, Black engaged in delay tactics. For his part, Black blames the delay on Vaughn claiming that Vaughn had engaged in delay tactics.

found that Black had failed to comply with the Agreement and had "'caused or materially contributed to' the delay … by failing to timely prepare and submit a proper QDRO" in accordance with the Agreement. Appellants' App. Vol. II p. 43. The trial court further found that Black owed Vaughn "statutory interest for 279 days on the $1,255,000.00 owed to [Vaughn] for a total amount of interest of $76,725[.00] ($275.00 per day * 279 days = $76,725[.00])." Appellants' App. Vol. II p. 43. In light of these findings, the trial court (1) granted Vaughn's summary-judgment motion; (2) denied Black's summary-judgment motion; (3) denied Black's request for attorney's fees; (4) entered judgment against Black "in the amount of $76,725[.00], payable immediately with statutory interest[;]" and (5) ordered that Vaughn, as the prevailing party, "shall be awarded her reasonable attorney fees, expert witness fees, cost and all other expenses she incurred in completing the transfer of funds to her." Appellants' App. Vol. II p. 44.

[11] Following a hearing, the trial court ordered that "Black shall compensate [Vaughn] for attorney fees in the sum of $62,600.00 for [Shirley] and $15,500.00 for [attorney Darryn Duchon]." Appellants' App. Vol. II p. 45. On July 8, 2025, the trial court granted attorney Shirley's request for sanctions and ordered "Black and William Harrington, jointly and severally, to compensate [Shirley]

for attorney fees of $17,500[.00][2] within thirty days[.]"[3] Appellants' App. Vol. II p. 46.

Discussion and Decision

I. Summary Judgment

[12] Black contends that the trial court erred in granting Vaughn's motion for summary judgment and in denying his competing motion for the same.

> This Court reviews summary judgments de novo, applying the same standard as the trial court. Summary judgment is appropriate only when the designated evidence shows there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Parties filing cross-motions for summary judgment neither alters this standard nor changes our analysis—we consider each motion separately to determine whether the moving party is entitled to judgment as a matter of law.

Erie Indem. Co. for Subscribers at Erie Ins. Exch. v. Est. of Harris by Harris, 99 N.E.3d 625, 629 (Ind. 2018) (citations and quotation omitted). We will affirm an award of summary judgment "upon any theory or basis supported by the designated materials." *Webb v. City of Carmel*, 101 N.E.3d 850, 861 (Ind. Ct. App. 2018).

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[2] The trial court's order originally compensated Shirley in the amount of $21,000.00 but the amount is crossed out and replaced with $17,500.00.

[3] Shirley had moved for sanctions after Black and his counsel had requested that Shirley be found liable for an award of attorney's fees for proceedings that occurred after Shirley had withdrawn from the case.

[13] In arguing that the trial court erred in granting summary judgment to Vaughn and denying his request for summary judgment, Black asserts that the trial court misinterpreted the Agreement.

> [M]atters of contract interpretation are particularly well-suited for de novo appellate review, because they generally present questions purely of law. A contract may be construed on summary judgment if it is not ambiguous or uncertain, or if the contract ambiguity, if one exists, can be resolved without the aid of a factual determination. The meaning of a contract is a question for the factfinder, precluding summary judgment, only where interpreting an ambiguity requires extrinsic evidence.

In re Ind. State Fair Litig., 49 N.E.3d 545, 548 (Ind. 2016) (brackets added, internal brackets, citations, and quotations omitted).

> In interpreting a contract, we ascertain the intent of the parties at the time the contract was made, as disclosed by the language used to express the parties' rights and duties. We look at the contract as a whole to determine if a party is charged with a duty of care and we accept an interpretation of the contract that harmonizes all its provisions. A contract's clear and unambiguous language is given its ordinary meaning. A contract should be construed so as to not render any words, phrases, or terms ineffective or meaningless.

Ryan v. TCI Architects/Eng'rs/Contractors, Inc., 72 N.E.3d 908, 914 (Ind. 2017) (citations omitted). "The four corners rule makes clear that where the language of a written instrument is unambiguous, … the parties' intent is to be determined by reviewing the language contained within the four corners of that written instrument." *Id.* at 917 (quotation omitted). "[E]xtrinsic evidence is

not admissible to add to, vary or explain the terms of a written instrument if the terms of the instrument are susceptible of a clear and unambiguous construction." *Id.* (brackets in original, quotation omitted).

[14] The Agreement was "entered into effective June 1, 2023[.]" Appellants' App. Vol. II p. 172. The Agreement provides, in relevant part, as follows:

> 2. Distribution. [Vaughn] and [Black] agree that [Black], as Plan Administrator with respect to the Keogh Accounts, shall cause Fidelity Investments to distribute to a rollover IRA account created by [Vaughn] at Fidelity Investments, account number ending in 1856, the sum of One Million Two Hundred Fifty-Five Thousand Dollars and Zero Cents ($1,255,000.00) on or before Friday, July 14, 2023, in a manner which maintains their character as a tax-deferred retirement account and are not an income taxable distribution to her. The transfer shall be accomplished by [Vaughn] and [Black] completing and executing the Transfer Due to Divorce form, provided by Fidelity similar to that attached to the Agreed Motion as Exhibit "A."
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> 3. Responsibilities. [Black] and his counsel shall be responsible to draft and submit to the Post-Dissolution Court and to Fidelity Investments all documents and proposed orders required to effectuate the distribution within five (5) days. Should [Black], [Vaughn], and/or Fidelity require signatures, [Vaughn] and [Black] agree to sign all necessary documents within fourteen (14) days of a request.
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> 5. Failure to Timely Fund. Should [Vaughn] not receive her distribution on or before July 14, 2023, based upon a finding by the Post-Dissolution Court that [Black] has caused or materially contributed to any delay, [Black] shall pay [Vaughn] eight

> percent (8%) per annum on the undistributed amount (equating to $275.00 per day) until the date of funding.

Appellants' App. Vol. II pp. 174–75 (underlining in original).

[15] The trial court found that Black had "failed to comply with Paragraph 3 of the [Agreement] because he failed to 'draft and submit to the Post-Dissolution Court … all documents and proposed Orders required to effectuate the distribution within five (5) days' from June 1, 2023, the date the [Agreement] was signed and filed." Appellants' App. Vol. II p. 42 (ellipsis in original). The trial court further found that

> [Black] failed to comply with Paragraph 2 of the Settlement Agreement, because, as a result of his failure to timely draft and submit a proper QDRO, he failed to "cause Fidelity Investments to distribute [the subject funds to [Vaughn]] on or before Friday, July l4, 2023." [Vaughn] received the funds on April 18, 2024, 279 days later than required by Paragraph 2 of the Settlement Agreement.

Appellants' App. Vol. II p. 42 (second set of brackets in original, all others added). The trial court noted that Black did not file a QDRO until October 24, 2023—which QDRO was ultimately found to be improper and was vacated on February 13, 2024, requiring a subsequent QDRO to be filed—well beyond the five-day limit, and found that Black "'caused or materially contributed to' the delay in [Vaughn] receiving her funds by failing to timely prepare and submit a proper QDRO by June 6, 2023 in accord with Paragraph 3 of the [Agreement]." Appellants' App. Vol. II p. 43.

[16] Black challenges this finding on appeal by arguing that the Agreement did not specifically require him to draft and file a proper QDRO within five days of the execution of the Agreement. As far back as the parties' divorce decree in April of 2005, the parties and the trial court had contemplated the necessity of a QDRO, with the trial court ordering Black to transfer the funds to Vaughn "by the most expeditious means reasonably available, such as a [QDRO]." Appellants' App. Vol. II p. 172. While the Agreement did not mention a QDRO specifically, it required "*all documents and proposed orders* required to effectuate the distribution[.]" Appellants' App. Vol. II p. 174 (emphasis added). This language would include a proposed QDRO if, as was ultimately the case, such was required.

[17] Moreover, pursuant to the terms of the Agreement, Black was to file necessary documents with the trial court and Fidelity within five days, *i.e.*, on or before June 6, 2023. The record demonstrates that Black missed this deadline as he did not file the necessary "Transfer Due to Divorce" paperwork with Fidelity until June 8, 2023. While not specifically mentioned by the trial court in its order granting summary judgment to Vaughn, Black's failure to submit this paperwork within the five-day period following execution of the Agreement also supports the trial court's determination that Black had failed to satisfy his duties under Paragraph 3 of the Agreement.

[18] Again, we will affirm an award of summary judgment "upon any theory or basis supported by the designated materials." *Webb*, 101 N.E.3d at 861. The trial court found that Black had "failed to provide a legally valid excuse for

failing to perform his obligations under the [Agreement]." Appellants' App. Vol. II p. 43. Based on our review of the designated materials, we agree with the trial court in this regard.

[19] Furthermore, to the extent that Black argues that summary judgment for Vaughn was inappropriate because his delay in filing the required documents should be blamed on Fidelity or alleged delay by Vaughn, we note that alleged delays cited by Black occurred *after* Black had failed to satisfy his contractual obligations under Paragraph 3. The trial court rejected Black's arguments in this regard, finding that

> [e]ven if Fidelity or [Vaughn] had contributed to the delay, it would not change the outcome in this case. The [Agreement] does not excuse [Black's] conduct if Fidelity or [Vaughn] also contributed to the delay. The sole issue, therefore, is whether [Black] "caused or materially contributed to" the delay, regardless of Fidelity's or [Vaughn's] conduct. Based on the facts presented, [Black] "materially contributed to" the 279-day delay. As a result, he is obligated to pay interest to [Vaughn] pursuant to Paragraph 14 of the [Agreement].

Appellants' App. Vol. II p. 43. Black has demonstrated a pattern of dilatory behavior, failing to comply with court orders or prepare necessary paperwork, dating back to 2005. Given Black's pattern of dilatory behavior, together with his failure to provide an explanation for failing to comply with the five-day time requirement set forth in the Agreement, we cannot say that the trial court erred in determining that Black's delay in completing his contractual obligations

under Paragraph 3 "caused or materially contributed" to the ultimate delay.[4] Appellants' App. Vol. II p. 43. We affirm the trial court's order awarding summary judgment to Vaughn.

II. Attorney's Fees

[20] Black contends that the trial court abused its discretion in awarding Vaughn attorney's fees totaling $78,100.00 and Shirley fees totaling $17,500.00.

> We review a trial court's award of attorney's fees for an abuse of discretion. An abuse of discretion occurs when the court's decision either clearly contravenes the logic and effect of the facts and circumstances or misinterprets the law. To make this determination, we review any findings of fact for clear error and any legal conclusions de novo.

Zartman v. Zartman, 168 N.E.3d 770, 782 (Ind. Ct. App. 2021) (quotations omitted), *trans. denied*.

[21] > Generally, Indiana adheres to the "American Rule" with respect to the payment of attorney's fees, which requires each party to

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[4] Even assuming that Vaughn had caused some delay, we again note that the alleged delay by Vaughn occurred after Black's breach of the Agreement. "It is well established that when one party to a contract commits the first material breach of that contract, it cannot seek to enforce the provisions of the contract against the other party if that other party breaches the contract at a later date." *TKG Assocs., LLC v. MBG Monmouth, LLC*, 259 N.E.3d 306, 316 (Ind. Ct. App. 2025) (internal brackets and quotations omitted). "A material breach is often described as one that goes to the heart of the contract." *Id.* (quotation omitted). Given Black's history of delay and failure to comply with court orders regarding distribution of Vaughn's share of the Keogh Accounts (again dating back to 2005), we conclude that the five-day requirement for action by Black was a material term of the Agreement and Black's breach of said term is therefore material. Again, the Agreement specifically included time limitations for compliance with the Agreement and Black did not comply within the stated time limitations. As such, even if Vaughn did cause some later delay, Black's breach came first and he therefore cannot successfully argue that he was entitled to summary judgment because he cannot seek to enforce the part of the Agreement that awards attorney's fees to the prevailing party in any action stemming from the Agreement.

> pay his or her own attorney's fees absent an agreement between the parties, statutory authority, or rule to the contrary. Where, as here, the parties have included a contractual provision agreeing to pay attorney's fees, that agreement is enforceable according to its terms unless the contract conflicts with the law or public policy.
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> Even when provided for under the terms of a contract, an award of attorney's fees must be reasonable. The party requesting an assessment of attorney fees bears the burden of proving an appropriate allocation of fees between issues for which attorney fees may be assessed and those for which they may not. While a perfect breakdown is neither realistic nor expected, a reasonable, good faith effort is anticipated.

Clancy v. Terry's Disc. Windows & More, LLC, 272 N.E.3d 155, 161 (Ind. Ct. App. 2025) (citations and quotations omitted).

A. Vaughn

[22] Black's argument regarding the trial court's order that he pay attorney's fees to Vaughn is based on his claim that "when [the trial court's order awarding Vaughn summary judgment] is reversed and summary judgment is entered in favor of [Black], [Black] is the 'prevailing party' under the terms of the [Agreement]." Appellants' Br. p. 58. For the reasons set forth above, we affirmed the trial court's summary-judgment order in favor of Vaughn. Black, therefore, is not the prevailing party.

[23] Vaughn submitted affidavits from Shirley and Duchon setting forth the fees generated in connection to the underlying case. Black does not develop an argument that the fees generated by Shirley and Duchon were unreasonable.

Given the fee affidavits that were admitted into evidence at trial, coupled with the very acrimonious nature of the proceedings and demonstrated pattern of delay tactics by Black, we cannot say that the trial court's order is unreasonable. The trial court, therefore, did not abuse its discretion in ordering Black to pay attorney's fees totaling $78,100.00 to Vaughn.[5]

B. Shirley

[24] Black and Harrington contend that the trial court abused its discretion in ordering that they, jointly and severally, compensate Shirley for $17,500.00 in fees for work completed in relation to a motion to strike and for sanctions filed by Shirley. Indiana Code section 34-52-1-1(b) generally provides that

> [i]n any civil action, the court may award attorney's fees as part of the cost to the prevailing party, if the court finds that either party:
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> (1) brought the action or defense on a claim or defense that is frivolous, unreasonable, or groundless;
> (2) continued to litigate the action or defense after the party's claim or defense clearly became frivolous, unreasonable, or groundless; or
> (3) litigated the action in bad faith.

Indiana Code section 31-15-10-1(a) provides that in dissolution cases,

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[5] Black repeats his "prevailing party" argument with regards to his claim that the trial court abused its discretion in denying his request that Shirley be ordered to pay him attorney's fees. Again, Black is not the prevailing party below and the trial court, therefore, did not abuse its discretion in denying his claims for attorney's fees as such.

> [t]he court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

[25] Black and Harrington claim on appeal that Shirley did not have standing to request sanctions and fees against them while apparently disregarding the fact that they had requested the same against Shirley below. On September 11, 2024, Shirley filed a motion to strike and for sanctions, claiming that

> On June 20, 2024, attorney [Shirley] moved to withdraw as attorney for [Vaughn], which the Trial Court granted. [Black] never objected to the withdrawal; instead, it appears on August 19, 2024[,] Black filed a motion for summary judgment asserting liability against [Shirley], without giving him notice of potential liability or an opportunity to respond.
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> Black relies on Indiana Code Section 34-52-1-1 where parties are potentially liable for frivolous litigation. Westlaw lists 671 cases in its notes of decisions. Not a single one allows for liability against an attorney who has withdrawn from the case.
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> The named parties expect to resolve this case at a hearing scheduled for the first week of December. If required, [Shirley] cannot respond to any motion to hold him liable and file his own motion for summary judgment and the parties keep the hearing date. This appears to be a tactic by Black to either fleece [Shirley] into a nuisance settlement or torpedo the hearing date. Either way, the Trial Court should not countenance such unorthodox actions.

> WEHEREFORE, the Trial Court should strike any notion that [Shirley] is a party, or that he has any potential liability, and require Black to pay [Shirley] attorney fees in the amount of $825.00.

Appellee Shirley's App. Vol. II pp. 103–04 (footnote omitted). In their response to Shirley's motion to strike and for sanctions, Black and Harrington asserted that

> 17. Even though the Court withdrew the Appearance of Attorney Shirley on behalf of Respondent on June 20, 2024, Attorney Shirley remains an officer of this Court responsible for his conduct during the time that he represented [Vaughn] in this cause.
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> 18. Attorney Shirley's exposure to the risk of an award of attorney's fees as costs, pursuant to Indiana Code § 34-52-1-1, is not a function of him being a "party" to this cause. Attorneys are rarely parties to the litigated cases they handle. Instead, it is Attorney Shirley's status as an attorney in this case – now a former attorney in this case – that exposes him to the risk of an award of attorney's fees as costs pursuant to Indiana Code § 34-52-1-1.

Appellee Shirley's App. Vol. II pp. 107–08. We agree with Shirley that Black and Harrington "opened the door by asking the Trial Court to hold [him] liable for attorney fees" and that "they cannot complain when the door ends up slamming in their face." Appellee Shirley's Br. p. 17. Stated plainly, if Indiana Code section 34-52-1-1 provided the authority for the trial court to order Shirley to pay attorney's fees to Black and Harrington, then it surely provided the same

authority for the trial court to order Black and Harrington to pay attorney's fees to Shirley.

[26] In its order awarding Shirley fees, the trial court noted that after Shirley had filed his initial motion to strike and for sanctions, Black responded with a motion to strike and reply brief, in which he "again assert[ed] liability against [Shirley] for attorney fees." Appellants' App. Vol. II p. 46. After Shirley filed a second motion to strike and for sanctions, the trial court granted Shirley's motion and found that "attorney fees are appropriate." Appellants' App. Vol. II p. 46. Black and Harrington assert that the trial court did not specify that Black's request for fees from Shirley was "a baseless claim" or that any conduct by Black or Harrington was "vexatious and oppressive in the extreme and blatant abuse of the judicial process." Appellants' Br. pp. 65, 66 (quotation omitted). As such, Black and Harrington argue that the trial court abused its discretion by awarding fees without finding that their actions had been "frivolous, unreasonable[,] or groundless." Appellants' Br. p. 66 (quotation omitted).

[27] Shirley argues that "the only reasons Black and Harrington included [him] as a potential payor [of attorney's fees if Black were to be determined to be the prevailing party], especially after he withdrew from the case, were personal and vindictive." Appellee Shirley's Br. p. 15. Shirley further argues that "[i]n short, Black's addition of [Shirley] to his numerous motions for attorney fees was not necessary and vindictive because the [Agreement] already provided that if

Vaughn lost her motion to compel, she would pay Black's attorney fees, and she had ample funds to do so." Appellee Shirley's Br. pp. 15–16.

[28] Black and Harrington have demonstrated a pattern of engaging in dilatory acts and providing seemingly misleading or incomplete arguments in attempts to shift the blame for Black's failure to act in accordance with the dissolution decree and the Agreement to Vaughn and Shirley. The trial court, who has presided over this matter for a number of years and has experienced the parties' behavior firsthand, was in the best position to determine whether an award of fees to Shirley was warranted. We cannot say that the trial court's order constituted an abuse of discretion.

III. Appellate Attorney's Fees

[29] Both Vaughn and Shirley request appellate attorney's fees. Appellate Rule 66(E) provides that "[t]he Court may assess damages if an appeal … is frivolous or in bad faith. Damages shall be in the Court's discretion and may include attorney's fees."

> Our discretion to award attorney fees under Indiana Appellate Rule 66(E) is limited, however, to instances when an appeal is permeated with meritlessness, bad faith, frivolity, harassment, vexatiousness, or purpose of delay. Additionally, while Indiana Appellate Rule 66(E) provides this Court with discretionary authority to award damages on appeal, we must use extreme restraint when exercising this power because of the potential chilling effect upon the exercise of the right to appeal.

Thacker v. Wentzel, 797 N.E.2d 342, 346 (Ind. Ct. App. 2003) (internal citations omitted). While ultimately unsuccessful, we cannot say that Black's appeal is permeated with meritlessness, bad faith, frivolity, harassment, or vexatiousness. We therefore deny Vaughn's and Shirley's requests for appellate attorney's fees.

[30] The judgment of the trial court is affirmed.

Pyle, J., and Kenworthy, J., concur.

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