

NOT DESIGNATED FOR PUBLICATION

No. 125,358

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of  
STACY WESSLEY,  
*Appellee,*

and

ADAM WESSLEY,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; JEFF DEWEY, judge. Opinion filed September 15, 2023.  
Affirmed.

*John C. Nodgaard*, of Arn, Mullins, Unruh, Kuhn & Wilson, LLP, of Wichita, for appellant.

*Andrew L. Foulston* and *Jennifer M. Hill*, of McDonald Tinker PA, of Wichita, and *Megan A. Kimbrell*, of Floodman Family Law, of Wichita, for appellee.

Before HURST, P.J., BRUNS and SCHROEDER, JJ.

HURST, J.: Following a successful mediation, Stacy and Adam Wesley divorced after about 19 years of marriage. The parties reached an agreement through mediation and signed a handwritten settlement document. The district court thereafter entered a divorce decree addressing the parties' property division and parenting plan as agreed by the parties.

On appeal, the parties' dispute centers around the distribution of one asset, the remaining balance owed to Adam from the \$2,250,000 sale of certain stock shares. Stacy claims the divorce decree is ambiguous regarding how the parties intended to divide the remaining balance and that the available parol evidence proves the parties intended to evenly divide the remaining payments. But Adam claims the divorce decree unambiguously awards him three-fourths of the total sale price. The district court ultimately agreed with Stacy that the divorce decree was ambiguous and, therefore, relied upon parol evidence to resolve the ambiguity in Stacy's favor. Adam disagrees with the district court's resolution, claiming that the district court's ruling contravenes the parties' bargained-for agreement.

Stacy also seeks to recover her appellate attorney fees, arguing that Adam's argument on appeal is disingenuous. Upon review, this court finds the divorce decree ambiguous, and Adam provides no evidence to contradict Stacy's claims, which are supported by the available parol evidence. Although Adam walks a tight line arguing that the divorce decree unambiguously requires an outcome and also avoiding arguing that the parties intended that result, this court cannot say his claims are so frivolous as to warrant paying Stacy's attorney fees. Moreover, Stacy bears some responsibility for the ambiguity of the final divorce decree, and this court cannot say that Adam's opportunistic argument was so devoid of merit as to make it frivolous. The district court's decision is affirmed, and Stacy's motion to recover the attorney fees and costs she incurred in this appeal is denied.

#### FACTUAL AND PROCEDURAL BACKGROUND

On June 25, 2019, after approximately 19 years of marriage, Stacy petitioned for divorce from Adam and the parties eventually resolved their dispute, including distribution of assets, through mediation. This appeal centers around a single property issue that was settled at the mediation and eventually addressed in their divorce decree.

### *The Purchase Agreement and Promissory Note*

During their marriage, Adam owned 53.11% of a company called Tripod Ventures, LLC (Tripod Ventures). On December 23, 2019, about six months after Stacy filed for divorce, Adam contracted to sell 20,000 of his 53,110 Class A Tripod Ventures stock shares to Kyle Gerstner for \$2,250,000 pursuant to the terms of a purchase agreement (Purchase Agreement). At the time Adam signed the Purchase Agreement, Tripod Ventures had 100,000 outstanding shares divided into 72,700 Class A shares and 27,300 Class B shares. The Purchase Agreement provided that the purchase price would be paid through two separate payment streams. The first payment stream of \$1,250,000 was in exchange for 10,000 Class A shares to be paid to Adam over 60 months starting on December 26, 2019, and is guaranteed by a Promissory Note attached to the Purchase Agreement (First Payment Stream). The second payment stream for the final 10,000 Class A shares would be 65 equal payments of \$17,307.69 starting on December 26, 2024, and recurring on the last day of each four-week period thereafter until the remainder of the purchase price is paid in full (Second Payment Stream). This court observes some small discrepancies between the Purchase Agreement and Promissory Note related to the number of payments and ultimate price paid, but they are irrelevant to this court's analysis.

The Purchase Agreement provides that on December 26, 2019, 10,000 of the 20,000 purchased Tripod Ventures shares would be automatically transferred to Gerstner, which would leave Adam with a 43.11% ownership percentage in Tripod Ventures. Pursuant to the Purchase Agreement, the remaining 10,000 purchased Tripod Ventures shares would transfer to Gerstner in increments of 2,000 over the course of the scheduled payments. The Purchase Agreement further provided that on December 26, 2019, all of Adam's Class A shares—including those not sold to Gerstner—would automatically convert to Class B shares, making Adam a Class B member as of that date. However, the

Purchase Agreement also stated that when the 10,000 remaining shares transferred to Gerstner pursuant to the timeline established in the Purchase Agreement, those shares would automatically revert back to Class A shares. Therefore, upon completion of the entire Purchase Agreement, Gerstner would gain 20,000 Class A shares and Adam would retain 33,110 Class B shares—a 33.11% ownership in Tripod Ventures. Tripod Ventures eventually merged into KMG FFC, LLC (KMG).

### *The Mediated Settlement and Separation Agreement*

On October 2, 2020, the parties attended mediation for the purpose of attempting to settle their divorce proceedings, including dividing their property and establishing a parenting plan. Their respective counsel, and Stacy's expert, Dr. Jeffrey J. Quirin, attended mediation. At the time of the mediation, Gerstner still owed about \$2,081,250 under the Purchase Agreement. As part of the settlement negotiations, Dr. Quirin prepared a property division spreadsheet that was amended by the parties during the mediation.

The mediation resulted in a settlement document handwritten by the mediator, Robert Schmisser, and signed by the parties and their counsel. It also included a spreadsheet dividing the parties' property as an exhibit. Every page of the handwritten settlement document, including the page of the spreadsheet dividing the remaining balance of the Purchase Agreement, was initialed by the parties and their counsel. This handwritten settlement document is the only document included in the record on appeal that demonstrates the parties' agreement resulting from their mediation and, for purposes of this opinion, is considered the settlement agreement referred to by the parties and relied upon by the district court as referenced in the divorce decree (Settlement Agreement). The Settlement Agreement valued the "Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase" at \$2,081,250. The Settlement Agreement provided that the parties would "Divide Payments 50%-50%" and awarded

each party one-half of the total value: \$1,040,625. The Settlement Agreement also provided that Adam would retain as his sole property the "Tripod Ventures, LLC Class B Shares (43.11 percent interest)," but it assigned no monetary value to this property.

### *The Divorce Decree*

The district court entered a Journal Entry of Judgment and Decree of Divorce on October 31, 2020 (Divorce Decree). According to the parties, the Settlement Agreement was incorporated into the Divorce Decree. Additionally, the Divorce Decree states that the matter came "before the Court upon the agreement of the parties" and that "the agreement" was "filed herein."

In addressing the proceeds from the sale of Adam's Tripod Ventures shares, Section E, Paragraph 6 of the Divorce Decree provides that "[t]he parties are each awarded fifty percent (50%) of the Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase (i.e., the parties shall divide said payments 50/50)." The Divorce Decree does not define which document constitutes the "Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase." In Paragraph 2 of Section E, the Divorce Decree further provides that "[Adam] is awarded as his sole and separate property the 100% interest in TMG, LLC, and the 43.11% interest in Tripod Ventures, LLC Class B Shares." Finally, Paragraph 4 of Section E states that Adam "is awarded as his sole and separate property the payments to be received on the Note Receivable from Kyle Gerstner during the period January, 2020 through May 2020." The phrase "Note Receivable from Kyle Gerstner" is not defined in the Divorce Decree.

More than a year later, after receiving multiple payments from Tripod Ventures, Stacy became aware of a change at Tripod Ventures that risked her ability to continue receiving those payments. Stacy filed a motion in which she claimed:

"Recently, a new attorney became involved with Tripod Ventures/KMG. Once that occurred, [Stacy] was advised that, after all of this time, Tripod cannot continue to pay her the monthly funds because Tripod only owes a duty to [Adam]. [Stacy] was further advised that Tripod plans to either pay [Adam] the total monthly payout and [Adam] can then give [Stacy] her one-half payment, or Tripod will pay [Adam] a lump sum (buyout) payment and [Adam] could then pay one-half of the lump sum to [Stacy]. [Stacy] attempted to resolve this issue without Court intervention, but Tripod Ventures is treating [Stacy] as though she is not awarded a one-half share of this business and has no right to dictate how her one-half share is paid."

Stacy requested that the district court order "that she continue to receive her one-half share monthly payouts directly from Tripod Ventures/KMG (or a lump sum payout one day if she opts for that choice), and that [Adam] receives his own monthly payments or lump sum buyout."

### *The Post-Divorce Proceedings*

On March 14, 2022, the district court granted Stacy's request that she "continue to receive her one-half share monthly payouts directly from Tripod Ventures." However, the district court also ruled that, pursuant to the Divorce Decree, Stacy was not entitled to half of the entire remaining balance of the Purchase Agreement. Rather, the district court found that Stacy was only entitled to half of the First Payment Stream—the \$1,250,000 to be paid in installments starting on December 26, 2019. The district court found that because the Divorce Decree awarded the 43.11% interest in Tripod Ventures Class B shares solely to Adam, Stacy was not entitled to any of the remainder of the balance of the Purchase Agreement (i.e., the Second Payment Stream).

Stacy subsequently filed a motion to reconsider in which she requested that the district court set aside its prior ruling and order that she is entitled to half of the entire

remaining balance of the Purchase Agreement. Stacy argued that the Divorce Decree was ambiguous and the district court should therefore consider parol evidence to resolve that ambiguity. To that end, Stacy attached the following exhibits for the district court to consider in determining the parties' intent in the Divorce Decree: (1) the Purchase Agreement and Promissory Note; (2) the Settlement Agreement; and (3) a letter written by Dr. Quirin. In his letter, Dr. Quirin, who participated in the mediation, recounted the parties' negotiations concerning the division of the Purchase Agreement. Dr. Quirin concluded his letter by stating that "[t]here is no doubt in my mind that the parties, counsel, and mediator understood that the remaining portion of the entire \$2,250,000 payment to be paid to [*sic*] by Mr. Gerstner in accordance with the Class A Unit Purchase Agreement was to be shared equally by Mr. and Ms. Wessley."

Adam filed a response to Stacy's motion to reconsider, arguing the district court should affirm its prior ruling because the Divorce Decree was unambiguous and, therefore, the district court could not consider parol evidence in interpreting the Divorce Decree. Adam further argued that the district court lacked jurisdiction to modify the Divorce Decree pursuant to K.S.A. 2022 Supp. 23-2712(b). The district court conducted a hearing to consider Stacy's motion at which both parties presented argument. Adam did not provide any contradicting parol evidence to support an argument that the parties intended to only divide the First Payment Stream and that Adam receive the entire Second Payment Stream.

In its written order ruling on Stacy's motion to reconsider, the district court determined that "ambiguity exists as to what payments are due and when. The Promissory Note is unclear as to the two streams of payments and the start date of a portion of those payments." The district court further explained that "[b]y referencing the Promissory Note in the parties' Journal Entry and Decree of Divorce, it can be said that the ambiguity in the Promissory Note extends to the Journal Entry." Then the district court considered Stacy's parol evidence and determined that "the parties intended to each

receive one-half of the total Class A Share purchase price that remained owed to the parties" under the Purchase Agreement. The district court therefore set aside its prior ruling and ordered that each party receive one-half of the total remaining balance from the Purchase Agreement.

Adam appealed, and Stacy filed a motion requesting that this court order Adam to reimburse her appellate attorney fees and costs.

## DISCUSSION

Adam claims the district court erred in ordering that Stacy receive half of the payments from the Second Payment Stream by (1) determining that the Divorce Decree was ambiguous; (2) considering parol evidence to construe the Divorce Decree because it was unambiguous; and (3) modifying the property division in violation of K.S.A. 2022 Supp. 23-2712(b) because it was a matter settled by agreement and incorporated into the Divorce Decree. This court will address each claim in turn.

### I. THE DISTRICT COURT DID NOT ERR IN DETERMINING THAT STACY IS ENTITLED TO RECEIVE HALF OF THE ENTIRE REMAINING BALANCE OF THE PURCHASE AGREEMENT

Adam argues that the district court erred in finding the Divorce Decree ambiguous and considering parol evidence because, according to Adam, the Divorce Decree unambiguously awarded the entire Second Payment Stream under the Purchase Agreement solely to him. Resolution of Adam's claims requires this court to interpret statutes, contracts, and the district court's journal entry—all of which are questions of law over which this court exercises unlimited review. See *Nauheim v. City of Topeka*, 309 Kan. 145, 149, 432 P.3d 647 (2019) ("Statutory interpretation presents a question of law subject to de novo review."); *Trear v. Chamberlain*, 308 Kan. 932, Syl. ¶ 1, 425 P.3d 297 (2018) ("The interpretation and legal effect of written instruments are matters of law over

which appellate courts exercise unlimited review."); *Einsel v. Einsel*, 304 Kan. 567, Syl. ¶ 2, 374 P.3d 612 (2016) ("The interpretation of a journal entry, like the interpretation of all written instruments, presents a question of law over which an appellate court exercises de novo, or unlimited, review.").

Interpreting a divorce decree is like interpreting a contract—"the primary rule is to ascertain the intent of the court." *Einsel*, 304 Kan. 567, Syl. ¶ 3. Generally, if the divorce decree "is clear and can be carried out as written," then the parties' intent is clear and must be carried out as written without resorting to the rules of construction. *Einsel*, 304 Kan. 567, Syl. ¶ 3. When interpreting a written instrument, the court does not read each provision in isolation but considers "the entire instrument from its four corners," and the "law favors reasonable interpretations, and results which vitiate the purpose of the terms of the agreement to an absurdity should be avoided." *Waste Connections of Kansas, Inc. v. Ritchie Corp.*, 296 Kan. 943, 963, 298 P.3d 250 (2013) (quoting *Levin v. Maw Oil & Gas*, 290 Kan. 928, 939, 234 P.3d 805 [2010]). "Contract language is ambiguous only when the words used to express the parties' meaning and intention may be understood to reach two or more possible meanings." *Trear*, 308 Kan. 932, Syl. ¶ 3. When the natural and reasonable interpretation of a written instrument is applied and there is more than one possible outcome or meaning, that document is ambiguous. *Geer v. Eby*, 309 Kan. 182, 192, 432 P.3d 1001 (2019). If this court finds a written instrument is ambiguous, it may then consider external evidence to determine the parties' intent. *Russell v. Treanor Investments*, 311 Kan. 675, 680, 466 P.3d 481 (2020); *Trear*, 308 Kan. 932, Syl. ¶ 2; *Waste Connections of Kansas, Inc.*, 296 Kan. 943, Syl. ¶ 3.

At issue here is the meaning of provisions in the Divorce Decree related to the amount of money owed to Stacy from Adam's sale of his Tripod Ventures shares. Stacy argues that the parties intended to evenly divide the entire remaining purchase price—half from the First Payment Stream and half from the Second Payment Stream—while Adam argues that the Divorce Decree only awards Stacy half of the First Payment Stream

and nothing from the Second Payment Stream. Notably, Adam does not appear to dispute that the parties intended to evenly divide the total purchase price from the Purchase Agreement. It appears that Adam argues the parties' intent is irrelevant because the Divorce Decree unambiguously favors him in the division of the proceeds from the sale of the Tripod Ventures shares.

A. *The Divorce Decree is Ambiguous*

Although Adam argues that the district court only found ambiguity by looking to the external Purchase Agreement and Promissory Note—which were referenced and relied upon in the Divorce Decree—this court finds the Divorce Decree ambiguous within its four corners. However, as Adam readily concedes, the Divorce Decree does not stand on its own but incorporates the parties' Settlement Agreement. Adam argues that the Divorce Decree "included a property settlement agreement of the parties" and that the "parties entered into a settlement agreement which was incorporated into the Journal Entry which was approved by both parties and their attorneys." However, this court finds the Settlement Agreement similarly ambiguous. Adam cannot have it both ways, arguing to incorporate and rely upon the Settlement Agreement and ignoring how its ambiguity contributes to the ambiguity in the Divorce Decree. Nonetheless, even without considering the ambiguity that arises from the parties' incorporated Settlement Agreement, the Divorce Decree is ambiguous as to the amount owed to each party from the Note(s) referenced in Section E.

Section E, Paragraph 6 of the Divorce Decree states that "[t]he parties are each awarded fifty percent (50%) of the Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase (i.e., the parties shall divide said payments 50/50)." The Divorce Decree does not define the total amount owed or amount owed to each party on that note receivable. Because that section does not state the amount owed, this court first looks within the four corners of the Divorce Decree to determine the

amount. *Russell*, 311 Kan. at 680. Adam essentially argues that the Divorce Decree need not include the specific amount the parties intended to equally divide because the note receivable referenced in Paragraph 6 states the amount. However, the Divorce Decree does not define which document constitutes the note receivable referenced in Paragraph 6, and that term has more than one plausible meaning. The term "Note Receivable" could refer to the entire Purchase Agreement, or it could refer, as Adam argues, to only the exhibit attached to the Purchase Agreement constituting the Promissory Note. Therefore, the amount owed to each party under Paragraph 6 is not clear from the face of the document. Assuming that this alone does not render the Divorce Decree ambiguous, this court must look further to determine the amount owed to each party under Paragraph 6.

Adam argues that "[t]here was one and only one Promissory Note receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Unit purchase," and the Divorce Decree is therefore unambiguous. However, this court does not just look to a single paragraph in the Divorce Decree to determine the meaning of Paragraph 6 while disregarding the other surrounding language. See *Russell*, 311 Kan. at 680. Paragraph 4 of Section E contains another reference to a note receivable involving Kyle Gerstner and states that "[Adam] is awarded as his sole and separate property the payments to be received on the Note Receivable from Kyle Gerstner during the period January, 2020 through May 2020." Paragraph 4 refers to a "Note Receivable from Kyle Gerstner," yet Paragraph 6 refers to a "Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase." As previously stated, the Divorce Decree does not define the note receivable as referenced in either Paragraphs 4 or 6 and does not explain whether the paragraphs reference the same document. Assuming the note(s) receivable referenced in Paragraphs 4 and 6 are the same document, then Paragraph 6 awards 50% of the entire note receivable to Stacy, while Paragraph 4 awards Adam a portion of the same note receivable as his sole property. One way to read the paragraphs together is that Stacy is to receive 50% of the amount owed on the note receivable less the amount awarded solely to Adam in Paragraph 4. Another way to read it is that Stacy receives 50% of the total

note receivable, and Paragraph 4 merely relates to the timing of how Stacy receives that percentage. Thus, she would receive a higher portion of later payments to make up for the portion allocated to Adam from January to May 2020. These two competing interpretations of Paragraphs 4 and 6 demonstrate further ambiguity in the Divorce Decree.

While Adam asserts that the Promissory Note attached as an exhibit to the Purchase Agreement constitutes the note(s) receivable referenced in the Divorce Decree, it is also reasonable to believe that the parties intended to refer to the *entire* Purchase Agreement. First, there is no document in the record referred to as a "Note Receivable," "Note Receivable from Kyle Gerstner," or a "Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase," which makes these references in the Divorce Decree susceptible to multiple plausible meanings, thus creating ambiguity. Second, Section E, Paragraphs 4 and 6 of the Divorce Decree describe the note(s) receivable differently, which could indicate an intent that the paragraphs refer to different documents, creating further ambiguity. Third, contrary to Adam's assertion, the Promissory Note upon which he relies is not a standalone document but a short exhibit attached to the Purchase Agreement, and the Purchase Agreement is the document that explains the sale of Adam's Class A Tripod Ventures shares. For these reasons, the Divorce Decree is ambiguous because it is reasonable to interpret the term "Note Receivable" in the Divorce Decree to refer to either the Purchase Agreement or the Promissory Note.

Adam claims that the meaning of Paragraph 6 is clear when read together with Paragraph 2 of Section E, which states that "[Adam] is awarded as his sole and separate property the 100% interest in TMG, LLC, and the 43.11% interest in Tripod Ventures, LLC Class B Shares." Adam argues that because the Divorce Decree awarded him 43.11% interest in Tripod Ventures Class B shares as his sole property, the entire Second Payment Stream pursuant to the Purchase Agreement belongs to him. Under his

interpretation, the 50% division described in Paragraph 6 only applies to the First Payment Stream guaranteed by the Promissory Note.

Contrary to Adam's assertion, the record does not contain a single document that is readily identifiable as the only document that could plausibly be referred to in Paragraphs 4 or 6 of the Divorce Decree. Moreover, the Promissory Note upon which Adam relies for his interpretation of Paragraph 6 does not explain the meaning of Paragraph 2 related to Adam receiving 43.11% interest in Tripod Ventures Class B shares. Therefore, this court must consult the Purchase Agreement, but it does not contain any reference to Adam having a 43.11% interest in Class B Tripod Ventures shares. Rather, the Purchase Agreement states that after the sale Adam will have a 33.11% interest in Tripod Ventures Class B shares.

The reference to 43.11% could be read as a simple typo or mathematical error. However, if the court does a bit of analysis and math, the 43.11% could also be read as a reference to the amount of Tripod Ventures shares Adam would have for a short time immediately after transferring the first 10,000 shares pursuant to the Purchase Agreement. That 43.11% is a temporary ownership amount before Adam starts transferring portions of the remaining 10,000 shares pursuant to the Purchase Agreement. The remaining 10,000 shares are only temporarily classified as Class B shares and automatically revert to Class A shares upon their later transfer to Gerstner. If the parties intended for Stacy to only receive 50% of the remaining payments from the First Payment Stream and for Adam to receive 100% of the payments from the Second Payment Stream, there were far more clear, unambiguous, and simple ways to provide for that distribution than how Adam proposes this court read the Divorce Decree.

Even assuming the parties intended to reference 43.11% rather than Adam's ultimate ownership percentage of 33.11%, there is still ambiguity as to how Paragraph 2 relates to Paragraph 6. Adam argues that, for purposes of Paragraph 6, this court should

look only to the dollar value articulated in the Promissory Note attached to the Purchase Agreement and essentially ignore the Purchase Agreement itself. However, only by reading the Purchase Agreement could the court determine the meaning of Paragraph 2 and how that relates to Paragraph 6 because the Promissory Note does not even mention the purchase of Class A shares. The question remains: When the Divorce Decree references the "Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase" in Paragraph 6, is it referring to the entire Purchase Agreement setting forth Adam's sale of Class A shares to Gerstner or is it referring only to the dollar amount listed in the two-page Promissory Note attached to the Purchase Agreement which makes no reference to Gerstner's purchase of Class A shares?

The Divorce Decree is ambiguous in multiple ways because (1) it references amounts contained in an undefined "Note Receivable" which is described in two different ways; (2) it does not state the amount Stacy is owed in Paragraph 4 of Section E; (3) through Paragraphs 4 and 6 of Section E, it appears to award Stacy a portion of the sale price that has been exclusively awarded to Adam; and (4) one reading of Paragraph 2 could award Adam a percentage ownership of the remaining stock that appears inconsistent with Paragraph 4. Adam strongly contests any argument that the Divorce Decree is ambiguous in an attempt to prevent this court's review of parol evidence because he argues the parol evidence changes the meaning of the Divorce Decree. Interestingly, he does not argue that the parol evidence is inconsistent with the parties' actual intent. This court's ultimate obligation is to determine the parties' intent, and if that cannot be done through the four corners of the written document, then the court may consult parol evidence to determine that intent. Adam appears to concede that the parol evidence of the Purchase Agreement and Promissory Note are both necessary to interpret the Divorce Decree but nevertheless objects to the consideration of any other parol evidence.

B. *The Parties' Settlement Agreement Remains Enforceable and is Ambiguous*

Even without consulting parol evidence, it is undisputed that the Divorce Decree resulted from the parties' settlement agreement reached through mediation. Therefore, rather than the district court conducting a trial in which it received evidence, made credibility determinations, and applied the law to that evidence to determine a property division and parenting plan, the Divorce Decree was intended to reflect the parties' intentions resulting from their own agreement. It is likewise undisputed that the parties created a settlement document that they intended be incorporated into the Divorce Decree. On appeal, Adam asserts that the "divorce case was finalized pursuant to a property settlement agreement" which "was incorporated into the Journal Entry of Judgment and Decree of Divorce." Stacy agrees that "the District Court incorporated the parties' separation agreement . . . into the Decree of Divorce." Moreover, the Divorce Decree provides that "[t]his matter comes before the Court upon the *agreement of the parties*" and that the court reviewed "*the agreement filed herein*." (Emphases added.) The Divorce Decree also states that the parties' settlement agreement is independently enforceable, providing that "Schmisseur shall serve as the arbitrator of any disputes the parties may have with regard to the settlement agreements reached on October 2, 2020 and documentation related to said agreements."

On appeal, the only document evidencing the parties' settlement reached during mediation is the handwritten document submitted by Stacy with her Motion to Reconsider, to which Adam has not otherwise objected as inaccurate or inadmissible. As previously stated, this court refers to that as the Settlement Agreement throughout. The district court specifically states that the Settlement Agreement remained a separate, enforceable contract under which the parties could seek remedies; furthermore, appellate courts treat settlement agreements incorporated into divorce decrees as fully enforceable. When a district court incorporates a separate settlement agreement into a divorce decree, that agreement is not abandoned as a mere resource for drafting the divorce decree.

Rather, the agreement continues to be a binding contract on the parties. "A property settlement agreement incorporated into a divorce decree is a hybrid in the law having the characteristics of a judgment and retaining the contractual rights of the parties." *In re Marriage of Knoll*, 52 Kan. App. 2d 930, Syl. ¶ 1, 381 P.3d 490 (2016). The Kansas Supreme Court has explained:

"[T]he executed agreement is subject to enforcement pursuant to its terms and the decree of the court. In determining the effect of the decree, the agreement is properly to be considered, and this court is of the opinion the confirmation of the agreement and its merger into the decree does not abolish the contractual aspects of the agreement, but leaves the court in the position to construe the provisions of the agreement consistent with the facts and circumstances and the expressed intention of the parties." *In re Estate of Sweeney*, 210 Kan. 216, 224, 500 P.2d 56 (1972).

Here, the Divorce Decree specifically states that it reflects and is based upon the terms of the parties' Settlement Agreement and that the Settlement Agreement is therefore not abandoned but—as the parties agree—part of their Divorce Decree and continues to bind them. The Settlement Agreement contained conflicting and ambiguous terms which were transferred to the Divorce Decree. The Settlement Agreement valued the "Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase" at \$2,081,250 and awarded half of that value (\$1,040,625) to each party. Not only does this term of the Settlement Agreement demonstrate that the parties intended to refer to the Purchase Agreement when using the phrase "Note Receivable," it also strongly supports Stacy's position that the parties intended to equally divide the entire remaining balance of the Purchase Agreement. The Settlement Agreement further provides that Adam would retain as his sole property the "Tripod Ventures, LLC Class B Shares (43.11 percent interest)." Different ways to interpret this provision are explained above, and one interpretation could be used to support Adam's position that Stacy is only entitled to half of the First Payment Stream (i.e., the \$1,250,000 to be paid in installments starting on December 26, 2019, pursuant to the Purchase Agreement and Promissory

Note guaranteeing the First Payment Stream). However, following Adam's interpretation that he is entitled to 100% of the Second Payment Stream conflicts with the clear provision that Stacy is entitled to half of the total purchase price, which demonstrates ambiguity in the Settlement Agreement.

The Divorce Decree is ambiguous as it is susceptible to two different interpretations—one being that Stacy receive half the total purchase price set forth in the Purchase Agreement and the other being that she receive only half of the amount from the First Payment Stream guaranteed by the Promissory Note. See *Sprint Nextel Corp. v. Middle Man, Inc.*, 822 F.3d 524, 530-33 (10th Cir. 2016) (applying Kansas law and finding ambiguity when the contract, including a lack of a definition for a term, could lead to two reasonable interpretations). The use of the term "Note Receivable" in the Divorce Decree does not definitively refer to any document in the record because it is not defined—the phrase is used differently in Paragraphs 4 and 6. The Promissory Note cannot be read alone to have any meaning related to Class A shares as described in Paragraph 6 or the Class B shares referenced in Paragraph 2. Moreover, the Settlement Agreement appears to define the Purchase Agreement as the "Note Receivable from Kyle Gerstner for Tripod Ventures, LLC Class A Share Purchase."

The Settlement Agreement, which the parties agree is incorporated into the Divorce Decree and which the Divorce Decree states is relied upon and remains separately enforceable, suffers from the same ambiguity insofar as both are susceptible to two different interpretations, and it is genuinely uncertain which of the two interpretations is proper. See *Trear*, 308 Kan. 932, Syl. ¶ 3; *Iron Mound v. Nueterra Healthcare Management*, 298 Kan. 412, 418, 313 P.3d 808 (2013).

While the district court found ambiguity in the Promissory Note and extended that ambiguity to the Divorce Decree, this court finds ambiguity in the terms of the Divorce Decree and the separately enforceable Settlement Agreement. The district court therefore

ultimately reached the correct result notwithstanding its erroneous path to that result. See *Montoy v. State*, 278 Kan. 765, 768, 102 P.3d 1158 (2005) ("If a trial court reaches the right result, its decision will be upheld even though the trial court relied upon the wrong ground or assigned erroneous reasons for its decision. [Citation omitted.]"); see also *Gannon v. State*, 302 Kan. 739, 744, 357 P.3d 873 (2015).

C. *The District Court Did Not Err in Consulting Parol Evidence and Finding that It Supports the Conclusion that the Parties Intended to Evenly Divide the Remaining Purchase Price from the First and Second Payment Streams*

Having found the Divorce Decree and Settlement Agreement ambiguous, the district court did not err in consulting parol evidence to determine the parties' intent. *Trear*, 308 Kan. 932, Syl. ¶ 2; *Russell*, 311 Kan. at 680; *Waste Connections of Kansas, Inc.*, 296 Kan. 943, Syl. ¶ 3. Stacy submitted parol evidence supporting her argument that the parties intended to evenly divide the entire purchase price in the Purchase Agreement. First, the Settlement Agreement—which the terms of the Divorce Decree are based upon—contains an incorporated worksheet that lists the value of the "Note Receivable from Kyle Gerstner for Tripod" as \$2,081,250 and then assigns Stacy and Adam equal amounts of that value, specifically \$1,040,625 each. The worksheet signed by the parties and incorporated into the Settlement Agreement demonstrates that the parties used the phrase "Note Receivable" to refer to the entire Purchase Agreement, including the attached Promissory Note, rather than referring just to the dollar amount in the Promissory Note. Additionally, Stacy submitted a letter from her expert, Dr. Quirin, in which he recounted the parties' negotiations concerning the division of the remaining balance of the Purchase Agreement. Dr. Quirin concluded that "[t]here is no doubt in my mind that the parties, counsel, and mediator understood that the remaining portion of the entire \$2,250,000 payment to be paid to [sic] by Mr. Gerstner in accordance with the Class A Unit Purchase Agreement was to be shared equally by Mr. and Ms. Wessley."

This court finds it telling that Adam does not challenge the accuracy of this parol evidence or Stacy's claim that the parties intended to evenly divide the entire remaining balance set forth in the Purchase Agreement. Rather, Adam argues that the Divorce Decree unambiguously states otherwise. This court disagrees. This court is charged with enforcing the Divorce Decree by discerning the parties' intent as expressed in its unambiguous terms. However, when ambiguity exists, as it does here, the court must determine the parties' intent using parol evidence. At the heart of the issue is always the parties' intent, which is not difficult to determine here based upon the parol evidence. While the parties' intent could have been more carefully expressed in the Divorce Decree to avoid ambiguity, this court finds that the intent is ultimately clear. The lack of clarity in the Divorce Decree cannot and should not be used as an opportunistic mechanism to contravene the parties' actual intent when settling and resolving their divorce dispute. Thus, the district court did not err in determining that the parol evidence clearly demonstrates the parties' intent to divide the entire purchase price equally between the parties, less payments received by Adam during a specified time.

## II. THE DISTRICT COURT HAD JURISDICTION TO DETERMINE THE ISSUE

Adam also argues that the district court's order from which he now appeals modified a matter settled by agreement that was incorporated in the Divorce Decree, in violation of K.S.A. 2022 Supp. 23-2712(b). Adam claims that because the district court is prohibited from making such a modification, it lacked jurisdiction to enter the order. Much like this court's interpretation of a contract, when interpreting a statute, this court must look to the "intent of the Legislature" ascertained—when the statute is plain and unambiguous—from "the plain language of the statute, giving common words their ordinary meaning." *In re M.M.*, 312 Kan. 872, 874, 482 P.3d 583 (2021).

While Adam is correct that courts are generally prohibited from modifying "[m]atters settled by an agreement incorporated in the decree," the district court did not

modify the Settlement Agreement or Divorce Decree. See K.S.A. 2022 Supp. 23-2712(b) ("Matters settled by an agreement incorporated in the decree, other than matters pertaining to the legal custody, residency, visitation, parenting time, support or education of the minor children, shall not be subject to subsequent modification by the court except: [1] As prescribed by the agreement; or [2] as subsequently consented to by the parties."). Rather, the district court merely interpreted the parties' intent. It clarified the ambiguous meaning of the terms of the Divorce Decree and Settlement Agreement and the parties' rights under those documents as evidenced by their intent. The district court's order therefore did not run afoul of K.S.A. 2022 Supp. 23-2712(b).

### III. STACY IS NOT ENTITLED TO ATTORNEY FEES ON APPEAL

Stacy seeks her attorney fees and costs associated with this appeal, claiming that Adam's appeal is frivolous and his "continued litigation of a matter that was fully resolved by a settlement agreement between the parties is contrary to public policy." This court exercises unlimited review over the question of law of whether a party is entitled to their attorney fees. See *In re Estate of Oroke*, 310 Kan. 305, 317, 445 P.3d 742 (2019). Appellate attorney fees may be awarded "for services on appeal in a case in which the district court had authority to award attorney fees." Supreme Court Rule 7.07(b)(1) (2023 Kan. S. Ct. R. at 52); see *In re Estate of Oroke*, 310 Kan. 305, Syl. ¶ 8. This court may order a party to pay the attorney fees and costs of the other party if it finds that the party has filed an appeal "frivolously, or only for the purpose of harassment or delay." Supreme Court Rule 7.07(c) (2023 Kan. S. Ct. R. at 52).

An appeal is frivolous if there is no justiciable question and it is readily recognized as devoid of merit in that there is little prospect that it can ever succeed. *McCullough v. Wilson*, 308 Kan. 1025, 1037, 426 P.3d 494 (2018). This court may "award attorney fees in divorce, separate property, or annulment cases 'to either party as justice and equity require.'" *In re Marriage of Williams*, 307 Kan. 960, 982-83, 417 P.3d 1033 (2018); see

K.S.A. 2022 Supp. 23-2715 ("Costs and attorney fees may be awarded to either party as justice and equity require.").

Stacy has complied with all applicable rules in her request for attorney fees, and the district court had authority to award fees, and thus this court has authority to grant Stacy's request. See Supreme Court Rule 7.07(b)(1)-(2); *In re Estate of Oroke*, 310 Kan. 305, Syl. ¶ 8; see also K.S.A. 2022 Supp. 23-2715. However, Stacy's motion fails. Although it is clear to this court that the parties' intent was to evenly divide the payments from the Purchase Agreement, there are ambiguities in both the Divorce Decree and Settlement Agreement for which Stacy is not blameless. Stacy approved the Separation Agreement and Divorce Decree but now asserts both are ambiguous. Therefore, Stacy had the opportunity to prevent the litigation costs for which she now seeks reimbursement from Adam by ensuring the Settlement Agreement and Divorce Decree were more precisely drafted. Moreover, the district court initially found Adam's position meritorious, making it difficult for this court to say that his appeal is entirely devoid of merit even though his position on appeal is ultimately fruitless. Stacy's motion for attorney fees is accordingly denied.

#### CONCLUSION

The Settlement Agreement and Divorce Decree are both ambiguous and, therefore, the district court properly considered parol evidence to determine the parties' intent. The Divorce Decree referenced some of the parol evidence the court used to determine the parties' intent, and the intent expressed in the parol evidence is clear. In resolving the ambiguity, the district court did not modify the Settlement Agreement or Divorce Decree—the district court's order merely ensured the documents would be applied as the parties intended. The judgment of the district court is therefore affirmed. Although she prevails, Stacy is not entitled to reimbursement of her attorney fees or costs; her motion is denied.

Affirmed.