

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE

Hollie Detweiler
Lynn, Indiana

IN THE COURT OF APPEALS OF INDIANA

Hollie Detweiler,
Appellant-Petitioner,

v.

Steven Detweiler,
Appellee-Respondent

March 16, 2021

Court of Appeals Case No.
20A-DN-2033

Appeal from the
Randolph Circuit Court

The Honorable
Kimberly S. Downing,
Special Judge

Trial Court Cause No.
68C01-1903-DN-220

Vaidik, Judge.

Case Summary

- [1] Hollie Detweiler (“Wife”) appeals the trial court’s denial of her request for incapacity maintenance from her ex-husband Steven Detweiler (“Husband”). We affirm.

Facts and Procedural History

- [2] Husband and Wife married in 1988. In June 2017, they moved from Minnesota to Randolph County, Indiana, where they lived with Wife’s mother. In October 2018, they separated, and Husband moved out of Wife’s mother’s house. Wife remained at her mother’s house.
- [3] In March 2019, Wife filed for divorce. The final hearing was held in February 2020. At the time of the hearing, Wife was not working and still living with her mother, who did not charge her for rent, utilities, or food. Husband had an apartment and earned approximately \$725 per week (gross). The parties owned no real property and had no savings or retirement, and they had not filed taxes since 2012. According to Husband, he had no money remaining at the end of the month after his expenses. *See* Tr. pp. 33-35.
- [4] Wife asked the trial court to award her incapacity maintenance under Indiana Code section 31-15-7-2(1), which provides:

If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected, the court may find that maintenance for the spouse is necessary

during the period of incapacity, subject to further order of the court.

In support of her request, Wife testified she had numerous medical conditions that prevented her from working, including degenerative disc disease, osteophyte formation, lumbar spondylosis, osteoporosis, asthma, anxiety, arthritis in her knee, lumbago, depression, essential tremors, and one knee replacement. Wife testified she had applied for Supplemental Security Income (SSI) benefits with the Social Security Administration, but no determination had been made yet.¹ In addition, Wife testified she wanted to get her own place but didn't have any money. However, as Wife concedes on appeal, she "proffered no evidence as to what her living expenses would be if she had her own place." Appellant's Br. p. 11.

[5] In June 2020, the trial court issued a decree dissolving the parties' marriage. The court denied Wife's request for incapacity maintenance because she lived with her mother (who did not charge her anything), she presented no evidence "about what her living expenses would be if she were to have her own place," "[n]one of the exhibits presented by Wife say that she is unable to work," and "there has not been a determination by SSI at this time indicating that she is unable to work." Appellant's App. Vol. II p. 12. Thereafter, Wife moved to admit newly discovered evidence and to correct error. Specifically, Wife sought

¹ Wife testified she didn't qualify for Social Security Disability Insurance (SSDI) because she had not "paid in enough." Tr. p. 10.

to admit the “Notice of Award” she had received after the final hearing approving her claim for SSI benefits for \$783/month. *Id.* at 46. Wife asked the court to reconsider its denial of incapacity maintenance given the Notice of Award.

[6] A hearing was held on Wife’s motions in October 2020. Husband did not object to the admission of Wife’s Notice of Award. *See* Tr. p. 53. Instead, Husband argued that even assuming Wife was incapacitated, she was not entitled to incapacity maintenance because she provided no evidence she had “any expenses” or was “going to have expenses of her own.” *Id.* at 55. The trial court denied Wife’s motion to correct error.

[7] Wife now appeals.

Discussion and Decision

[8] We first note Husband did not file an appellee’s brief. Under that circumstance, we do not undertake to develop the appellee’s arguments. *Branham v. Varble*, 952 N.E.2d 744, 746 (Ind. 2011). Rather, we will reverse upon an appellant’s prima facie showing of reversible error. *Id.*

[9] Wife contends the trial court erred in not awarding her incapacity maintenance. Section 31-15-7-2(1) provides:

If the court finds a spouse to be physically or mentally incapacitated to the extent that the ability of the incapacitated spouse to support himself or herself is materially affected, the court may find that maintenance for the spouse is necessary

during the period of incapacity, subject to further order of the court.

An award of incapacity maintenance is within the trial court's discretion. *Campbell v. Campbell*, 118 N.E.3d 817, 819-20 (Ind. Ct. App. 2019), *reh'g denied, trans. denied*. Even if the trial court finds a spouse is incapacitated, an award of maintenance is still within the court's discretion. *Id.* at 820. This is because whether a spouse should receive incapacity maintenance is "extremely fact-sensitive and filled with nuance that our trial courts are best able to sift through." *Id.* at 821.

[10] Here, even assuming Wife is incapacitated, the trial court was not compelled to order rehabilitative maintenance. Wife lived with her mother, who did not charge her for housing, utilities, or food. In addition, there is no indication in the record Wife cannot continue living with her mother and help pay for her own expenses with her monthly SSI benefits. Although Wife testified she wanted to get a place of her own, she submitted no evidence as to where she wished to live or how much it would cost. This lack of evidence combined with the fact Husband and Wife lived with Wife's mother for nearly a year and a half **before** Husband moved out indicates Wife may continue living with her mother. Finally, Husband testified he has no money remaining at the end of the month after his expenses and no assets to liquidate. Under these circumstances, the court did not err in not awarding Wife incapacity maintenance.

[11] Affirmed.

Brown, J., and Pyle, J., concur.