

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as binding precedent, but it may be cited for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Toby Sorg,  
*Appellant-Petitioner,*

v.

Lisa A. Wegehoft,  
*Appellee-Respondent*

January 26, 2023

Court of Appeals Case No.  
22A-DC-421

Appeal from the Elkhart Circuit  
Court

The Honorable Michael A.  
Christofeno, Judge

Trial Court Cause No.  
20C01-1806-DC-424

**Crone, Judge.**

### Case Summary

- [1] Toby Sorg (Husband) appeals the trial court's order (Appealed Order) awarding spousal incapacity maintenance to Lisa A. Wegehoft (Wife). He argues that the

trial court abused its discretion in finding that Wife is entitled to incapacity maintenance, in admitting certain evidence, and in setting the amount of incapacity maintenance. We affirm.

## **Facts and Procedural History<sup>1</sup>**

[2] Husband and Wife were married in May 1994. During the marriage, Husband and his brother became owners of two car dealerships, Sorg Dodge and Sorg Nissan, and they also owned LSD Properties, a holding company for the dealerships' real estate. Wife has a bachelor of arts degree in economics and worked at a bank for two years after the parties were married. Husband and Wife had three children: Madeline, age twenty-one when the dissolution petition was filed; Grady, age eighteen at the date of filing; and Sophia, age fifteen at the date of filing. By 1996 when Madeline was born, Wife had

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<sup>1</sup> Counsel for both parties frequently fail to support their statements and arguments with a citation *to the specific page* in the record or to the case law where they can be found. *See* Ind. Appellate Rule. 22(C) (requiring factual statement to be supported by citation to volume *and page* where it appears in the appendix, transcript, or exhibits). Further, both parties fail to correctly use short citation forms for cases. *See* Ind. Appellate Rule 22 (requiring that citations adhere to Bluebook rules). *The Bluebook: A Uniform System of Citation* R. B.4, at 8, R. B.10.2, at 16 (Columbia L. Rev. Ass'n et al. eds., 21st ed. 2020). These shortcomings have hindered our review. We have often explained,

A brief should not only present the issues to be decided on appeal, but it should be of material assistance to the court in deciding those issues. On review, we will not search the record to find a basis for a party's argument ... nor will we search the authorities cited by a party in order to find legal support for its position.

*Young v. Butts*, 685 N.E.2d 147, 151 (Ind. Ct. App. 1997) (citation omitted).

stopped working, and she became a homemaker for most of the remainder of the parties' marriage.<sup>2</sup>

[3] Beginning in 2004, Dr. Patrick Russell, a neurologist, diagnosed Wife with myelopathy, a neurological disorder of the spinal cord, caused in her case from compression of the spinal cord at the junction between the spinal cord and the brain stem. Appellant's App. Vol. 2 at 73. Due to her myelopathy, Wife experienced a foot drop in her left foot, from which she will never recover. Over the years, Wife experienced progressive impairment of her mobility, strength, gait, balance, and independence. Appealed Order at 5. In 2004, she was falling a lot, but by 2009, she was falling more frequently and required assistance moving around her home. At some point, a baclofen pump was installed in her body to reduce spasticity (extreme tightness of the leg muscles resulting in an inability to walk and move her legs and feet), but neither the Appealed Order nor the parties' briefs indicate when this was installed. *Id.* at 4; Appellant's App. Vol. 2 at 58, 75.

[4] On June 25, 2018, Husband filed a petition for dissolution. On August 15, 2018, Wife suffered a stroke. Her physical and mental condition continued to deteriorate. She suffered from degenerative disc disease, progressive

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<sup>2</sup> For approximately one year beginning in early 2018, Wife was employed by Sorg Dodge to work in quality control, for which she was paid \$200 a week to make approximately twenty phone calls.

quadriplegia, a mild cognitive impairment, memory impairment, depression, and anxiety. Appealed Order at 4-5.

- [5] Ultimately, the parties were able to reach a mediated agreement on many issues, including property settlement. On June 27, 2020, the trial court issued a final decree of dissolution approving the mediated agreement and dissolving the parties' marriage. Pursuant to the mediated agreement, the parties reserved the issues of spousal maintenance, child support, and college expenses. Wife then filed petitions for incapacitated spousal maintenance and college expenses for Sophia.
- [6] The trial court held a trial on the reserved issues in July and October 2021. Wife testified, as well as the parties' son Grady, Wife's sister Linda Kent, Wife's brother-in-law Kenneth Kent, and certified public accountant (CPA) and certified valuation analyst (CVA) Douglas Osthimer. Wife submitted eighty-four exhibits, including her medical records and Dr. Russell's deposition, which were admitted pursuant to the parties' stipulation. Wife's exhibits also included tax returns, valuations of Husband's businesses, budgets, and child support obligation worksheets. Husband testified and offered six exhibits, which included bank statements, Husband's W-2 statements, loan information, and child support obligation worksheets.
- [7] On January 28, 2022, the trial court issued the Appealed Order, granting Wife's petitions for spousal incapacity maintenance and college expenses and ordering Husband to pay child support and Wife's attorney fees. Regarding spousal

maintenance, the trial court found that Dr. Russell's testimony was the most credible and of the greatest value in determining whether Wife is incapacitated. *Id.* at 4. In his deposition, Dr. Russell testified that Wife was "severely disabled, severely physically impaired, and handicapped." *Id.* at 6. He also testified that Wife's physical and mental conditions have worsened over the past sixteen years, and that she "is not capable today or in the last ten years of being gainfully employed if gainfully employed is requiring her to work 40 hours a week of any kind of work at all." *Id.* The court found that based on Dr. Russell's testimony, which corroborated the testimony of Wife, Grady, Linda Kent, and Kenneth Kent, Wife has a physical or mental incapacity which materially affects her ability to support herself. *Id.* at 13. The court ordered Husband to provide Wife with spousal maintenance of \$5,000 per month. This appeal ensued. Additional facts will be provided as necessary.

## **Discussion and Decision**

### **Section 1 – The trial court did not abuse its discretion in awarding spousal incapacity maintenance.**

- [8] Husband contends that the trial court abused its discretion in awarding Wife spousal incapacity maintenance. "A trial court's power to award spousal maintenance is wholly within its discretion." *Barton v. Barton*, 47 N.E.3d 368, 375 (Ind. Ct. App. 2015), *trans. denied* (2016). On appeal, we presume that the trial court correctly applied the law in making an award of spousal maintenance, and this presumption is one of the strongest we apply to a case on appeal. *Id.* We will reverse a trial court's decision to award spousal

maintenance only when the decision is clearly against the logic and effect of the facts and circumstances of the case. *Augspurger v. Hudson*, 802 N.E.2d 503, 508 (Ind. Ct. App. 2004). In awarding spousal maintenance, a trial court is required to make findings. Ind. Code § 31-15-7-1. “We will not set aside special findings unless they are clearly erroneous.” *Campbell v. Campbell*, 118 N.E.3d 817, 819 (Ind. Ct. App. 2019), *trans. denied*. In determining whether the findings are clearly erroneous, we will not reweigh the evidence or judge the credibility of the witnesses.<sup>3</sup> *Id.*

- [9] “A dissolution court may award maintenance for only ‘three, quite limited’ purposes: spousal incapacity maintenance, caregiver maintenance, and rehabilitative maintenance.” *Coleman v. Atchison*, 9 N.E.3d 224, 228 (Ind. Ct. App. 2014) (quoting *Dewbrew v. Dewbrew*, 849 N.E.2d 636, 644 (Ind. Ct. App. 2006)). Here, the trial court granted incapacity maintenance. Indiana Code 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.

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<sup>3</sup> Husband states that the trial court summarized the evidence and appears to have adopted the summaries as findings. Appellant’s Br. at 15. Given that the court specifically stated that it found certain testimony and evidence to be credible, we treat the summary of such testimony and evidence as findings.

[10] In reviewing an award of incapacity maintenance, our supreme court has stated that “incapacity maintenance must be evaluated by giving a strict if not literal interpretation to the language of the statute.” *Cannon v. Cannon*, 758 N.E.2d 524, 526 (Ind. 2001). The court explained,

Where a trial court finds that a spouse is physically or mentally incapacitated to the extent that the ability of that spouse to support himself or herself is materially affected, the trial court should normally award incapacity maintenance in the absence of extenuating circumstances that directly relate to the criteria for awarding incapacity maintenance.

*Id.* at 527. Thus, “[o]nce the requisite finding of incapacity has been made, the trial court should [either] award incapacity maintenance or identify specific extenuating circumstances directly related to the statutory criteria for awarding such maintenance that would justify denying the award.” *Barton*, 47 N.E.3d at 375.

[11] Husband first asserts that Wife should not be awarded maintenance because she “became incapacitated only after her stroke, which occurred 51 days after the filing of the Petition for Dissolution.” Appellant’s Br. at 17. We note that Husband does not indicate that he raised this argument to the trial court, and our review of the Appealed Order does not suggest that the trial court considered such an argument. In general, “an argument or issue presented for the first time on appeal is waived for purposes of appellate review.” *Ind. Bureau of Motor Vehicles v. Gurtner*, 27 N.E.3d 306, 311 (Ind. Ct. App. 2015). Accordingly, this argument is waived.

[12] Next, Husband contends that the trial court improperly failed to consider the assets Wife received in the property settlement and that these assets were sufficient to preclude a finding that she was materially affected by any incapacity. We disagree. The trial court found that maintenance for Wife is necessary. In so doing, the court noted that Wife received approximately \$980,000 in the property settlement, including a cash payment of \$300,000, but that Husband received his ownership interests in four business,<sup>4</sup> and because Husband's ownership interests in the businesses were so substantial, the cash payment was necessary to achieve a fair property settlement. Appealed Order at 13-14. The court also found that while Wife's assets would accrue some interest income, Husband's ownership interests would have substantially more income based on past history. *Id.* Thus, the court found that Wife did not receive a substantially larger portion of the marital assets because of her disability and that under the circumstances, she should not be required to expend all of the assets that she received in the property settlement rather than receive reasonable incapacity maintenance. We also note that Husband's assertion that Wife's assets are sufficient to reasonably support her for the rest of her life is unsupported by any evidence or citation to the record. As such, we are unpersuaded that the trial court abused its discretion in finding that Wife was incapacitated to the extent that her ability to support herself is materially

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<sup>4</sup> In November 2020, after the parties separated, Husband and his brother purchased Sorg Chevrolet. Neither the parties nor the Appealed Order provide the value of Husband's ownership interests in the businesses.



affected and that maintenance for her is necessary during the period of her incapacity.

## **Section 2 – Husband waived his argument that the trial court abused its discretion in admitting certain evidence.**

[13] Wife’s brother-in-law Kenneth assisted her with her medical bills, budgeting, banking, payment of bills, communicating with her trial counsel, and preparing for court hearings. He reviewed Wife’s exhibits and prepared documents summarizing the parties’ tax returns and projecting Wife’s future expenses based upon her current financial situation. At trial, Kenneth testified regarding Wife’s budget and future needs as well as the parties’ respective available net income. Wife maintained that Kenneth was competent to testify to these matters as a lay witness.<sup>5</sup> Kenneth received a bachelor of science in business administration and/or analysis and has a master of business administration with an emphasis in accounting and finance. He worked at the Ford Motor Company for thirty-one years, was one of three vice presidents, served as corporate treasurer, ran the entire Ford treasurer organization, and was the CFO of Ford Credit.

[14] On appeal, Husband asserts that the “trial court abused its discretion by allowing testimony and admitting exhibits from a lay witness [Kenneth]

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<sup>5</sup> A witness not testifying as an expert may testify in the form of an opinion if it is “(a) rationally based on the witness’s perception; and (b) helpful to a clear understanding of the witness’s testimony or to a determination of a fact in issue.” Ind. Evid. Rule 701.

regarding future needs and financial circumstances that would face [Wife].” Appellant’s Br. at 23. Husband states, “During the course of the testimony of Kenneth Kent, [Husband] objected frequently to certain financial testimony from Mr. Kent as being speculative, lacking expertise for an opinion, and lack of foundation.” *Id.* He then provides a list of nine times he objected to Kenneth’s opinion and/or exhibits. *Id.* at 23-24. However, in a subsequent paragraph, Husband lists eight instances where he alleges that Kenneth “presented opinion testimony about conclusions from the evidence that would clearly require an expert to reach such conclusions.” *Id.* at 25. Husband does not provide a citation to the transcript for any of these opinions or directly link them to the objections he previously listed. Husband also fails to cite any Indiana Rules of Evidence. In addition, he fails to separately address each piece of evidence he objected to or each of the instances of opinion testimony to explain why the court abused its discretion in admitting that evidence or opinion. Instead, Husband directs us to “two examples” from Kenneth’s testimony and exhibits that he argues show that Kenneth’s experience “was inapposite to the conclusions and predictions [Kenneth] was making.” *Id.* Because Husband does not address any evidence other than his “two examples,” his challenge to the admissibility of any evidence not addressed in his two examples is waived for failing to present a cogent argument. *See Ind. Appellate Rule 46(A)(8)(a)* (requiring that contentions in appellant’s brief be supported by cogent reasoning and citations to authorities, statutes, and the appendix or parts of the record on appeal relied on); *Loomis v. Ameritech Corp.*,

764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (failure to present cogent argument waives issue for appellate review), *trans. denied*.

[15] As for Husband's examples, his first is Kenneth's testimony "regarding estimated interest rates and forward looking forecasts for the next thirty years in developing [Wife's] Exhibits 55, 56, 62, and 65."<sup>6</sup> Appellant's Br. at 25. Husband then baldly asserts that Kenneth was making assumptions about interest rates and inflation, and acting as an actuary, without the training or experience that an actuary has. *Id* at 26. His single bald statement is not a cogent argument, and therefore his challenge to these exhibits and Kenneth's opinions based on them is waived. *See* Ind. Appellate Rule 46(A)(8)(a); *Loomis*, 764 N.E.2d at 668.

[16] Husband's second example involves Wife's Exhibit 54, which is a summary of Husband's tax returns and income. Ex. Vol. 10 at 222. Exhibit 54 is not included in Husband's list of objected-to evidence, and he does not argue that it was inadmissible. In fact, he did not object to it at trial. Tr. Vol. 2 at 104. Apparently, Husband's purpose in presenting this example is to show that Kenneth made a mistake, and therefore did not have the sufficient expertise to present the opinions to which Husband objected. If there was a mistake on the

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<sup>6</sup> Exhibits 55 and 56 summarize Wife's budgets for 2018 and 2019 and projected budget for 2021. Ex. Vol. 10 at 223, 227. Exhibit 62 summarizes Husband's available income based on the average income from his 2015-2019 tax returns. *Id.* at 234. Exhibit 65 is a summary of Wife's projected future annual cash flow. Ex. Vol. 11 at 21.

exhibit, Husband has failed to show that it is relevant to Kenneth's qualifications regarding other exhibits.

### **Section 3 – The trial court did not abuse its discretion in determining the amount of incapacity maintenance.**

[17] The trial court awarded Wife incapacity maintenance of \$5,000 a month. In reaching this amount, the trial court compared the parties' incomes and budgets and found that Husband "will have the ability to easily meet his own needs while providing incapacitated spousal maintenance to [Wife]." Appealed Order at 15. The trial court found that Wife was receiving \$232.00 per week in social security income, and that combined with the maintenance she received pursuant to the provisional order, her weekly income was \$1,599.00. *Id.* 15-16. The court found that Husband's "gross annual income for 2018 was in the amount of \$354,737.00, for 2019 \$373,931.00, and for 2020, \$388,627.00." *Id.* at 17. The court found that in 2020, "Husband had gross weekly income of \$7,474.00." *Id.* In determining Husband's income, the trial court "considered all of the relevant testimony and all of the relevant exhibits introduced into evidence, including but not limited to the Former Husband's W-2 statements, the tax returns, and Former Wife's Exhibit 54." *Id.* The court concluded as follows:

The Former Wife sought spousal maintenance for her incapacity in the amount of \$5,000.00 per month as argued by her attorney in closing arguments. When the Court considers *the net weekly income of the Former Husband after taxes*, the Court concludes that the Former Wife's request for incapacity spousal maintenance in

the amount of \$5,000 per month is reasonable under all of the circumstances in this case.

*Id.* at 17 (emphasis added).

- [18] Husband challenges the amount of spousal maintenance on three grounds. First, he contends that the amount was based on inadmissible evidence from a lay witness, Kenneth. This contention fails because Husband has waived his claims that the evidence was inadmissible.
- [19] Second, Husband asserts that an award of \$5,000 a month is improper because it is more than the \$4,000 requested by Wife in her testimony at trial. Husband correctly states that “[a]n award of maintenance must be based upon the evidence presented.” Appellant’s Br. at 28 (citing *Heiligenstein v. Matney*, 691 N.E.2d 1297 (Ind. Ct. App. 1998)). However, Wife’s attorney requested \$5,000 in closing argument, and Husband’s argument ignores other evidence in the record. He cites no case law in support of the proposition that the trial court was somehow bound by Wife’s request. As such, Husband’s argument fails to show that the trial court’s award is not supported by the evidence.
- [20] Third, Husband argues that \$5,000 a month is improper because the trial court considered his gross income rather than disposable income and because it considered income from the Payroll Protection Program (PPP). Although the court calculated Husband’s gross annual income for 2018 through 2020, the court specifically stated that it considered the “net weekly income of the Former Husband after taxes” in concluding that Wife’s request for incapacity spousal

maintenance in the amount of \$5,000 per month is reasonable. Appealed Order at 17. As far as the PPP payments to Husband's businesses, Husband's citations to the record show that exhibits regarding the PPP payments were entered into evidence, but they do not show that the trial court included the PPP payments in determining Husband's gross or net incomes. And even if it did, Husband does not persuade us that it would have been improper merely because the PPP payments were a one-time occurrence. We find no abuse of discretion here.

[21] Based on the foregoing, we affirm the trial court's award of incapacity maintenance.

[22] Affirmed.

May, J., and Weissmann, J., concur.