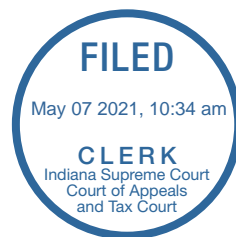


MEMORANDUM DECISION

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

Lee Evans Dunigan
Carlisle, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lee Evans Dunigan,
Appellant-Petitioner,

v.

Brenshira Young,
Appellee-Respondent.

May 7, 2021

Court of Appeals Case No.
20A-DN-2273

Appeal from the Tippecanoe
Superior Court

The Honorable Steven P. Meyer,
Judge

Trial Court Cause No.
79D02-1911-DN-646

Friedlander, Senior Judge.

- [1] Lee Evans Dunigan (“Husband”), who is incarcerated and proceeding pro se, appeals the trial court’s order dissolving his marriage to Brenshira Young (“Wife”). He presents a number of arguments on appeal, but we address only

one: whether the trial court abused its discretion when it denied his requests for spousal maintenance, the equal division of property, and health insurance.

[2] We affirm.

[3] Husband and Wife were married in October 2013, yet stopped living together as husband and wife two months later in December 2013. They have no children of the marriage. On November 20, 2019, Husband filed a pro se petition for dissolution of marriage. A final hearing on the matter was held on November 13, 2020, during which Husband asked the trial court to award him half of Wife's finances and "half of any real estate owned" but did not provide the court with any evidence regarding the parties' marital assets. Tr. Vol. 2, p. 27. Husband also asked that the court require Wife to pay Husband's healthcare expenses.

[4] At the conclusion of the hearing, the court dissolved the parties' marriage and issued its dissolution decree, which provided in relevant part as follows:

4) Court finds . . . that the parties ceased living as Husband and Wife approximately two (2) months after the date of the marriage. Therefore, any assets accumulated during the marriage were minimal at best and finds as follows:

a) The parties have divided all personal property.

b) There are no joint debts.

c) There is no joint real estate. Each party shall remain the sole owner of the property in his/her possession or respective names.

5) Husband has requested the Wife assume some or all of his health insurance and/or expenses and the Court now [d]enies that request for the reason that the duration of the marriage was two (2) months and the parties have been separated since 2013.

Appellant's Br. pp. 21-22. Husband now appeals.

[5] Before addressing Husband's arguments, we note that although he is proceeding pro se, he is held to the same standard as trained counsel and is required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338 (Ind. Ct. App. 2004), *trans. denied*. This court will not "indulge any benevolent presumption on his behalf, or waive any rule for the orderly and proper conduct of [his appeal]." *Owen v. State*, 269 Ind. 513, 518, 381 N.E.2d 1235, 1239 (1978) (internal quotation marks and citation omitted).

[6] We also note that Wife 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 (Ind. 2011). Rather, we will reverse upon an appellant's prima facie showing of reversible error. *Id.*

[7] Husband first argues that the trial court abused its discretion when it failed to award him spousal maintenance. Husband claims that he was the "less fortunate spouse" in the marriage; he and Wife did not enter into a prenuptial agreement; Wife was unfaithful and then abandoned him; Wife might have claimed him as a dependent on her tax returns; the marriage lasted six years – not two months; he has been incarcerated since October 2018 and is "physically incapacitated from supporting himself" financially; and he suffers from a

serious medical condition. Appellant's Br. pp. 10, 17. Thus, according to Husband, he is entitled to incapacity maintenance under Indiana Code section 31-15-7-2(1) (1997).

- [8] Husband, however, has waived this argument because he asserts it for the first time on appeal. See *In re B.R.*, 875 N.E.2d 369 (Ind. Ct. App. 2007) (failure to raise an issue below constitutes waiver of that issue on appeal), *trans. denied*. Waiver notwithstanding, “[a] maintenance . . . award is designed to help provide for a spouse’s sustenance and support.” *Matzat v. Matzat*, 854 N.E.2d 918, 920 (Ind. Ct. App. 2006) (internal quotation and citation omitted). In the absence of an agreement between the parties, the trial court’s authority to order maintenance is limited to three options, only one of which is relevant here, that is: incapacity maintenance for a spouse who cannot support himself or herself. Ind. Code § 31-15-7-2(1); *Cannon v. Cannon*, 758 N.E.2d 524 (Ind. 2001). “The spouse seeking maintenance has the burden of proving that he or she is entitled to maintenance.” *Lesley v. Lesley*, 6 N.E.3d 963, 967 (Ind. Ct. App. 2014).
- [9] Husband argues that he is entitled to incapacity maintenance because he is incarcerated and suffers from abnormalities regarding his red blood cells and his lymphocytes. While he related this information to the trial court during the final hearing, Husband presented no evidence to support his claims of incapacity. Given the lack of evidence, we cannot say the trial court abused its discretion in failing to award Husband incapacity maintenance.

[10] Next, Husband disputes the trial court’s determination that each party would remain the sole owner of the property in his or her possession. He maintains that he is entitled to one-half of Wife’s finances and property. The division of marital assets is within the trial court’s discretion, and we will reverse a trial court’s decision only for an abuse of discretion. *O’Connell v. O’Connell*, 889 N.E.2d 1 (Ind. Ct. App. 2008). The “party challenging the trial court’s division of marital property must overcome a strong presumption that the trial court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal.” *Id.* at 10 (internal quotations omitted). On review, we will neither reweigh evidence nor assess the credibility of witnesses, and “we will consider only the evidence most favorable to the trial court’s disposition of the marital property.” *Id.*

[11] In dissolution proceedings, the trial court is required to divide the property of the parties “in a just and reasonable manner[.]” Ind. Code § 31-15-7-4(b) (1997). This division of marital property is a two-step process. *O’Connell*, 889 N.E.2d at 10. First, the trial court must ascertain what property is to be included in the marital estate; second, the trial court must fashion a just and reasonable division of the marital estate. *Id.* at 10-11.

[12] Regarding the property to be included in the marital estate, the trial court asked Husband “what property then are you asking for one-half interest[.]” and Husband was unable to provide the court with any details regarding any property that the parties had or might have acquired during the marriage. Tr.

Vol. 2, p. 27. The trial court then determined that because Husband and Wife lived together for only two months, the assets that the parties accumulated were minimal at best; the parties already had divided their personal property; the parties had no jointly-held real estate; and each party would remain the sole owner of the property in his or her possession.

[13] Based upon Husband's lack of evidence at the final hearing, we find that he has failed to overcome the strong presumption that the trial court properly determined the ownership and division of the parties' property. The trial court did not abuse its discretion when it made its determination, and we find no error.

[14] Regarding Husband's argument that the trial court should have directed Wife to assume his healthcare expenses and provide him with health insurance, we note that the trial court considered Husband's testimony regarding his medical issues and ultimately found that Husband's request should be denied because the parties' marriage lasted just two months and Husband and Wife had been separated since 2013. Considering the facts most favorable to the trial court's determination, we conclude that the evidence does not support a finding that the trial court abused its discretion when it denied Husband's request that Wife assume his healthcare expenses and provide him with health insurance.¹

¹ Husband also claims that the trial court judge denied him equal protection under the law and displayed partiality and "deliberate indifference" toward his dissolution action. We decline to address these claims.

[15] Judgment affirmed.

Mathias, J., and Weissmann, J., concur.