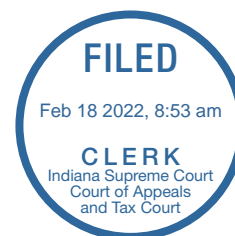


MEMORANDUM DECISION ON REHEARING

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.

February 18, 2022

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] In our memorandum decision addressing this appeal, we determined that the trial court did not err while dissolving the marriage between Lee Evans Dunigan and Brenshira Young. *Dunigan v. Young*, Case No. 20A-DN-2273, 2021 WL 1826983, at *3 (Ind. Ct. App. May 7, 2021). This Court addressed

Dunigan’s claims on their merits even though he violated Indiana Appellate Rule 49(A) by failing to file an Appellant’s Appendix with his Appellant’s Brief.

[2] In part, we stated in the memorandum decision: (1) Dunigan had procedurally defaulted his claim regarding spousal maintenance by failing to first present it to the trial court; and (2) waiver notwithstanding, the trial court did not abuse its discretion in rejecting Dunigan’s request for spousal maintenance. *Dunigan*, 2021 WL 1826983, at *2.

[3] On May 14, 2021, Dunigan filed a “Motion to Correct Error,” to which he attached what purported to be a letter he had filed with the trial court prior to the evidentiary hearing, in which he requested an award of spousal maintenance. This Court denied Dunigan’s Motion to Correct Error.

[4] Next, on June 2, 2021, Dunigan filed a “Motion for Discretionary Interlocutory Order,” in which he again stated that he had asked the trial court to award him spousal maintenance. This Court denied the motion.

[5] The Clerk’s Office closed the case on September 16, 2021. On October 18, 2021, Dunigan tendered a “Petition for Judicial Estoppel,” in which he again argued that he had asked the trial court to award him spousal maintenance and attached another copy of what appeared to be the letter he filed with the trial court requesting spousal maintenance. This Court denied the petition.

[6] On January 28, 2022, Dunigan belatedly tendered a petition for rehearing and a two-volume Appellant’s Appendix. We have directed the Clerk to file those

documents. The Appendix contains a verification statement as required by Indiana Appellate Rule 50(A)(2)(i), stating the contents of the Appendix are accurate copies of parts of the record on appeal. The Appendix also contains the letter that Dunigan mailed to the trial court prior to the evidentiary hearing, in which he requested an award of spousal maintenance.

[7] It now appears that Dunigan did request spousal maintenance from the trial court. But his belated petition for rehearing is his fourth bite at the apple after the issuance of the memorandum decision. Further, as we noted in the memorandum decision, even if Dunigan had not waived his claim, the trial court did not abuse its discretion in refusing to grant his request for spousal maintenance.

[8] Based on the foregoing, we grant the petition for rehearing to clarify our memorandum decision, but we affirm the decision in all respects. *See Smith v. King*, 907 N.E.2d 1088 (Ind. Ct. App. 2009) (granting petition for rehearing to clarify and affirm original opinion; even if petitioner's original claim on appeal was not waived, the Court's opinion also determined petitioner could not prevail on the merits). The proceedings in this Court are at an end.

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