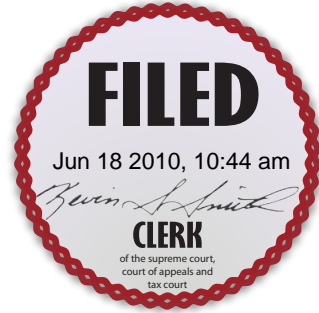


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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PATSY C. BATTIN, )  
 )  
 Appellant-Respondent, )  
 )  
 vs. ) No. 03A04-0912-CV-715  
 )  
 CURTIS R. BATTIN, )  
 )  
 Appellee-Petitioner. )

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APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT  
The Honorable Joseph W. Meek, Special Judge  
Cause No. 03D02-0903-DR-53

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**June 18, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Patsy C. Battin (“Mother”) appeals the marriage dissolution decree entered by the trial court in dissolution proceedings initiated by Curtis R. Battin (“Father”). We affirm in part, reverse in part, and remand with instructions.

### **Issues**

Mother raises five issues, which we consolidate and restate as follows:

- I. Whether remand is necessary for the trial court to rule on Mother’s contempt petition;
- II. Whether the trial court abused its discretion by dividing the marital estate equally between the parties;
- III. Whether the trial court abused its discretion by denying Mother’s request for maintenance; and
- IV. Whether the trial court abused its discretion in denying Mother’s request for attorney’s fees.

### **Facts and Procedural History**

The evidence most favorable to the trial court’s ruling shows that Mother and Father were married on July 18, 2002.<sup>1</sup> This was the second time they had been married to each other. Mother and Father adopted one child, B.B., born April 11, 1998. On February 15, 2009, Mother and Father were separated. On February 17, 2009, Father filed his petition for dissolution of marriage. On February 26, 2009, Mother filed a counter petition for dissolution. On May 1, 2009, the trial court conducted a provisional hearing and took the matter under advisement. On May 29, 2009, the trial court issued its provisional order,

awarding Mother custody of B.B., granting Father parenting time according to the Indiana Parenting Time Guidelines, ordering Father to pay \$58.43 a week for child support and \$114.00 a week for Mother's temporary maintenance, and ordering Father to pay \$350 of Mother's provisional attorney's fees. Appellant's App. at 61-69.

On September 11, 2009, Mother filed a verified petition and application for citation, requesting the trial court to issue a rule to show cause why Father should not be found in contempt of the provisional order. In the petition, Mother alleged that Father failed to pay his child support, maintenance, and attorney's fees obligations, failed to exercise his parenting time, and terminated B.B.'s cell phone service even though he was given credit for that expense toward his maintenance obligation. *Id.* at 38. Mother asked the trial court "to issue a Rule to Show Cause why [Father] should not be punished for contempt of this court, for attorney's fees, and for all other relief proper in the premises." *Id.* The trial court issued a rule to show cause and scheduled the contempt hearing with the final hearing.

On October 9, 2009, the trial court held the final hearing and took the matter under advisement. On November 23, 2009, the trial court issued its dissolution decree, dissolving the parties' marriage, granting Mother sole legal and physical custody of B.B., and providing in relevant part as follows:

## **B. Child Support**

### **Father's Ongoing Child Support**

24. Father works part time at Machinery Moving.

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<sup>1</sup> We remind Mother's counsel of his obligation to state the facts "in accordance with the standard of review appropriate to the judgment or order being appealed." Ind. Appellate Rule 46(A)(6)(b).

25. Since July 2, 2009, father has worked an average of 28.5 hours a week.

26. Father earns \$13.50 per hour.

27. Father's average weekly gross income is \$384.75 (28.5 hours/week  $\times$  \$13.50/hour = \$384.75).

....

30. Father and mother have agreed that father will not receive a parenting time credit toward the child support he owes in this case.

31. Mother is unemployed. Mother lost her job at Hisada America, Inc. because she did not comply with the company attendance policy. Specifically, mother missed at least two consecutive days of work without notifying Hisada that she would not be at work.

32. Mother was injured at work in April of 2009. She missed work as [a] result of her injury. Even so, mother did not comply with Hisada's attendance policy.

33. Mother does not receive any type of workers compensation, unemployment compensation or disability benefits.

34. Mother's only source of income is a \$500.00 a month stipend she receives from Jennings County Office of Family and Children.

35. Mother's average gross weekly income is \$116.28 a week (\$500.00 per month/4.3 weeks per month = \$116.28).

....

39. As a result, father shall pay child support of \$70.65 per week starting October 9, 2009 and every week after that until further Order of the court. ....

....

### **Uninsured Health Care Expenses**

42. Mother shall annually pay the first \$287.04 of uninsured health care expenses for [B.B.]. After that, father shall pay 77% of those costs and mother shall pay 23% of them.

....

### **Father's Ongoing Child Support Arrearage**

44. There have been seven (7) child support payment periods since October 9, 2009.

45. During that time, father should have paid \$494.55 (7 weeks  $\times$  \$70.65/week = \$494.55) in child support.

46. Father has paid \$295.44 in child support since October 9, 2009.

47. Accordingly, father owes an ongoing child support arrearage of \$199.11 ( $\$494.55 - \$295.44 = \$199.11$ ).

### **Father's Provisional Child Support Arrearage**

48. Father was ordered to pay provisional child support of \$58.43 a week.

49. Father's provisional child support began on May 1, 2009 and ended on October 9, 2009.

50. There were 24 child support payment periods between May 1, 2009 and October 9, 2009.

51. Father should have paid \$1,402.32 ( $24 \text{ weeks} \times \$58.43/\text{week} = \$1,402.32$ ) in child support during the provisional period. Father actually paid \$1,073.99 in child support during that time.

52. As a result, father owes a provisional child support arrearage of \$328.33 ( $\$1,402.32 - \$1,073.99 = \$328.33$ ).

### **Father's Total Child Support Arrearage**

53. Altogether, father owes child support arrearage of \$527.44 ( $\$328.33 + \$199.11 = \$527.44$ ).

....

### **Mother's Claim For Damages**

58. Mother claims that she is entitled to damages because father did not have parenting time with Brandon during the provisional period. Specifically, mother suggests that father should not have been given a parenting time credit toward his provisional child support. According to mother, she should be compensated for the parenting time credit father was given because father paid less provisional child support than mother claims he should have paid.

59. The record in the case reveals that mother did not file a specific motion asking the court to enforce father's parenting time with [B.B.]. While mother did assert that father was not exercising parenting time in a Verified Petition And Application For Citation she filed on September 11, 2009, mother included this assertion in a list of things she claimed father was not doing. This was not enough to put father on notice that she would be seeking damages for the parenting time credit.

60. As a result, mother's request for damages is DENIED.

## **C. PROPERTY DIVISION**

....

### **The House**

62. Mother and father own a house located ... in Columbus, Indiana. Unfortunately, neither party submitted an appraisal determining the value of the house.

63. Father did, however, submit records from the Bartholomew County Assessor's Office showing that the total assessed value of the house for tax purposes was \$73,000.00. The court finds this evidence to be credible and helpful in determining the value of the house. Accordingly, the court finds that the value of the house is \$73,000.00.

64. Father and mother have a mortgage on the house. As of October 9, 2009 the balance of the mortgage was \$60,150.00. As [a] result, the court finds that there is \$12,850.00 (\$73,000.00 - \$60,150.00) in equity in the house.

65. Father and mother's monthly mortgage payment is \$422.16.

66. Father does not have the income to pay the mortgage and maintain the house.

67. Mother does not have the income to pay the mortgage and maintain the house.

68. As a result, the court ORDERS that the house be sold. The net proceeds from the sale of the house shall be divided equally between father and mother. ... Father and mother will equally split all costs associated with selling the house. ....

....

### **Net Marital Estate**

77. Father and mother have a net marital estate of \$25,338.96 (\$103,068.02 - \$77,729.06 = \$25,338.96).

....

79. Based on the evidence and testimony presented at the hearing, the court finds there is no reason to deviate from an equal division of the marital estate in this case.

80. As a result, father and mother should each receive \$12,669.48 (\$25,338.96/2 = \$12,669.48), after deducting their debts, from the net marital estate.

....

**D. MOTHER’S REQUEST FOR MAINTENANCE**

87. Mother is asking the court to order father to pay maintenance in this case.

88. In April of 2009, mother aggravated an existing back problem while at work. Mother lifted an overload materials bin and that aggravated the back problem.

89. Mother has not worked since April of 2009.

90. Mother is seeing Dr. Thomas Marshall for her back problem. Doctor Marshall has treated mother since the early 1990’s for problems with her shoulder, elbow, back, ankle, and toenails.

91. Over the years, Dr. Marshall has diagnosed mother with impingement syndrome in her left shoulder, tendinitis of her elbow and degenerative disk disease of the lumbar spine. He has been able to effectively treat these problems with pain medication and trigger point injections.

92. Mother does have some work restrictions as a result of aggravating her back problem. Those restrictions do not prevent mother from working at a job similar to the one she had at Hisada.

93. Accordingly, mother is not physically incapacitated to the extent that her ability to support herself is affected.

....

95. Mother does not lack sufficient property to provide for her needs. Mother will receive 50% of the equity in the house, or approximately \$6,425.00, when it is sold. In addition mother will receive the 2007 RAV4 free and clear to any claims father may have to it. The RAV4 is worth \$16,865.00 and there is no debt owed on the RAV4.

....

97. Mother did not complete high school. She is willing to begin a G.E.D. program.

....

101. Father and mother have similar earning capacities, educational backgrounds, training, employment skills and work experiences. Neither of them have been absent from the job market for significantly long periods of time.

....

103. Based on the evidence and testimony presented at the hearing, the court finds that mother did not establish that she was entitled to maintenance under section 31-15-7-2 of the Indiana Code. As a result, mother’s request for maintenance is DENIED.

### **Father's Provisional Maintenance Arrearage**

104. Father was ordered to pay provisional maintenance of \$114.00 a week.

105. Father's provisional maintenance payments began on June 5, 2009 and ended on October 9, 2009.

106. There were 19 maintenance payment periods between June 5, 2009 and October 9, 2009.

107. Father should have paid \$2,166.00 ( $\$114.00/\text{week} \times 19 \text{ weeks} = \$2,166.00$ ) in maintenance during that time. Father actually paid \$991.88 in maintenance between June 5, 2009 and October 9, 2009.

108. Accordingly, father owes a provisional maintenance arrearage of \$1,174.12 ( $\$2,166.00 - \$991.88 = \$1,174.12$ ). Father shall repay this arrearage at the rate of \$15.00 per week beginning December 4, 2009 and every week after that until the maintenance arrearage is satisfied. ....

### **E. ATTORNEY FEES**

109. Based on the evidence and testimony presented at the hearing, the court finds that each party shall pay their own attorney fees.

110. Father was ordered to pay \$350.00 of mother's provisional attorney fees. Father still owes \$250.00 of those fees.

111. Father shall pay that \$250.00 directly to mother's attorney ... within 60 days of the date of this Decree Of Dissolution.

*Id.* at 14-25; Appellant's Br. at 30-41. Mother appeals.

## **Discussion and Decision**

### ***Standard of Review***

Initially, we note that Father has not filed an appellee's brief. When an appellee fails to submit a brief, we do not undertake the burden of developing arguments on the appellee's behalf, and we apply a less stringent standard of review with respect to showings of reversible error. *Murfitt v. Murfitt*, 809 N.E.2d 332, 333 (Ind. Ct. App. 2004). That is, we may reverse if the appellant establishes prima facie error, which is error at first sight, on first appearance, or on the face of it. *Id.*



Here, the trial court entered findings of fact and conclusions thereon. In reviewing the judgment, we must determine whether the evidence supports the findings and whether the findings support the judgment. *Klotz v. Klotz*, 747 N.E.2d 1187, 1190 (Ind. Ct. App. 2001). “The trial court’s findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them.” *Swadner v. Swadner*, 897 N.E.2d 966, 971 (Ind. Ct. App. 2008). To determine whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences flowing therefrom. *Klotz*, 747 N.E.2d at 1190. We neither reweigh the evidence nor judge the credibility of witnesses. *Hanson v. Spolnick*, 685 N.E.2d 71, 76 (Ind. Ct. App. 1997), *trans. denied*.

### ***I. Contempt Petition***

In her contempt petition, Mother alleged that Father failed to pay his child support, maintenance, and attorney’s fees obligations, failed to exercise his parenting time, and terminated B.B.’s cell phone service even though he was given credit for that expense toward his maintenance obligation.<sup>2</sup> Appellant’s App. at 38. Mother asserts that “[a]lthough, the Trial Court, in its Decree of Dissolution, dealt with child support and maintenance arrearages, it did not even discuss, deal with or issue a ruling on Wife’s contempt petition, as

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<sup>2</sup> With regard to the “credit” Father received for B.B.’s cell phone service, the cell phone “credit” is not synonymous with the meaning of that term as it is used in conjunction with parenting time. Instead, B.B.’s cell phone expense was included as one of Father’s monthly expenses to calculate Father’s net monthly income and compare that with Mother’s net monthly income for purposes of determining whether temporary spousal maintenance was warranted. Appellant’s App. at 65. It was not the case that B.B.’s cell phone expense was deducted from the temporary weekly spousal maintenance Father was ordered to pay pursuant to the provisional order.

it pertained to those issues, in addition to the issue of [Father] canceling the minor child's cell phone service." Appellant's Br. at 12. Further, Mother asserts that the trial court erred as to finding 59; namely, that Father had insufficient notice that Mother was seeking damages for Father's parenting time credit because Father did not exercise parenting time. Mother asks us to remand the case back to the trial court for a decision on her contempt petition.

Under the circumstances present here, we cannot agree with Mother that remand for additional rulings on her contempt petition is necessary. First, as to the trial court's finding that Father had insufficient notice that Mother was seeking damages for his parenting time credit, Mother asserts that he did have sufficient notice because in her contempt petition she sought "all other relief proper in the premises." Appellant's App. at 38. Given the all-encompassing nature of this phrase and lack of specificity, we cannot say that the trial court's finding that Father had insufficient notice that Mother was seeking damages for his parenting time credit is clearly erroneous.

Second, in her contempt petition, Mother requested that Father be punished for his alleged non-compliance with the provisional order. We observe that civil contempt is failing to do something that a court in a civil action has ordered to be done for the benefit of an opposing party. *Flash v. Holtsclaw*, 789 N.E.2d 955, 958 (Ind. Ct. App. 2003), *trans. denied*. Unlike criminal indirect contempt, the primary objective of a civil contempt proceeding is not to punish the contemnor but to coerce action for the benefit of the aggrieved party. *Thompson v. Thompson*, 811 N.E.2d 888, 905 (Ind. Ct. App. 2004), *trans. denied* (2005). Mother's request to have Father punished is improper, and therefore we find no error in the

trial court's failure to rule on her contempt petition in this regard.

Third, in the final dissolution decree, the trial court calculated Father's arrearages for his provisional child support and spousal maintenance obligations and ordered Father to make payments to satisfy the arrearages. Appellant's App. at 16-17, 24-25; Appellant's Br. at 32-34, 40-41. Also, the trial court ordered Father to pay the arrearage due on Mother's provisional attorney's fees directly to Mother's attorney. To the extent that the trial court did not rule on Father's termination of B.B.'s cell phone service or on whether Mother was entitled to attorney's fees attributable to work on the contempt petition, we conclude that any errors are harmless. *See, e.g., Balicki v. Balicki*, 837 N.E.2d 532, 541 (Ind. Ct. App. 2005) (holding that inclusion of nonexistent asset was harmless error where husband would receive 46.2 % of marital assets if the asset were excluded rather than 44.5%), *trans. denied* (2006). In sum, the trial court's failure to rule on every aspect of Mother's contempt petition does not require remand.

## ***II. Division of Marital Property***

Mother argues that the trial court abused its discretion in dividing the marital property. The division of marital assets lies within the trial court's sound discretion, whose determination we will reverse only for an abuse of that discretion. *DeSalle v. Gentry*, 818 N.E.2d 40, 44 (Ind. Ct. App. 2004). A 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.* "We may not reweigh the evidence or assess

the credibility of the witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property." *Id.*

"The division of marital property in Indiana is a two-step process." *Thompson*, 811 N.E.2d at 912. As to the first step, "all marital property goes into the marital pot for division, whether it was owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts." *Hill v. Hill*, 863 N.E.2d 456, 460 (Ind. Ct. App. 2007); Ind. Code § 31-15-7-4(a). Second, the trial court must divide the marital property under the statutory presumption that an equal division of marital property is just and reasonable. *Thompson*, 811 N.E.2d at 912. The division of marital property is governed by Indiana Code Section 31-15-7-5, which provides as follows:

The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
  - (A) before the marriage; or
  - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
  - (A) a final division of property; and
  - (B) a final determination of the property rights of the parties.

“[W]e will reverse a property distribution only if there is no rational basis for the award and, although the circumstances may have justified a different property distribution, we may not substitute our judgment for that of the dissolution court.” *Augspurger v. Hudson*, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004) (citation and quotation marks omitted).

Mother argues that the trial court erred in dividing the marital estate equally. Specifically, she contends that as to the contribution of each spouse to the acquisition of the property, she paid for the parties’ two vehicles with no contribution at all from Father. In addition, Mother argues that she owned the marital residence prior to the parties’ marriage. As to earning ability, Mother asserts that Father earns three times as much as she does, and Father’s earning ability is significantly superior to hers because she has worked labor-intensive jobs her entire life but now she is physically impaired and does not have a high school diploma that would enable her to obtain a more sedentary job. Mother’s physical impairments include impingement syndrome of her left shoulder, tendinitis of her elbow, degenerative disk disease of her lumbar spine, chronic low back pain, and degenerative disk disease of the cervical spine, with cervical neuritis. Exhibits Vol. 2 at 47, 52. Mother directs us to evidence that shows that she has work restrictions that “require her to do no repetitive bending or twisting, no overhead lifting or lifting away from her body ... will require the ability to sit down periodically through the day, usually after standing for two hours or so ...

is limited to about 15 pounds lifting.” *Id.* at 49.<sup>3</sup> Based on the foregoing, we conclude that as to the trial court’s decision to divide the marital estate equally, Mother has established prima facie error. Based on the evidence, we conclude that a just and reasonable division of the marital property is a 60/40 split in Mother’s favor. Accordingly, we reverse the trial court’s equal division of the marital estate. We remand with instructions to award sixty percent of the net marital estate to Mother and forty percent of the net marital estate to Father.

To a certain extent, Mother argues that the trial court erred in ordering the marital residence to be sold and the proceeds distributed to the parties. She contends that at the time of the final hearing, she was living in the marital residence with B.B. and that “if she had to move out of the marital residence it would cause an undue hardship upon the minor child because they would have to move out of the school district because of a lack of affordable housing.” Appellant’s Br. at 19. However, the trial court found that neither Mother nor Father was able to afford the mortgage and the upkeep on the marital house. Mother does not contest these findings. Accordingly, Mother has failed to establish prima facie error in this regard.

### ***III. Spousal Maintenance***

Mother challenges the trial court’s denial of her request for maintenance. The trial court “may make an award of spousal maintenance upon the finding that a spouse’s self-supporting ability is materially impaired.” *Fuehrer v. Fuehrer*, 651 N.E.2d 1171, 1174 (Ind.

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<sup>3</sup> Mother asserts that her “monthly prescription medicine expense totaled \$2,064.76.” Appellant’s Br. at 18. However, our review of the record shows that her monthly prescription medicine expense is just under \$100. Exhibits Vol. 1 at 40. The \$2,064.76 figure represents *all* of Mother’s monthly expenses. *Id.*

Ct. App. 1995), *trans. denied*. The decision whether to award maintenance lies within the trial court's sound discretion, and we will reverse only when the decision is clearly against the logic and effect of the facts and circumstances of the case. *Id.* 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.

“The essential inquiry is whether the incapacitated spouse has the ability to support himself or herself.” *McCormick v. McCormick*, 780 N.E.2d 1220, 1224 (Ind. Ct. App. 2003).

Here, the trial court found that even though Mother had work restrictions, those restrictions did not prevent Mother from working at a job similar to the one she had at Hisada, and that Mother is not physically incapacitated to the extent that her ability to support herself is affected. Appellant's App. at 23 (findings 92, 93); Appellant's Br. at 39. Mother contends that these findings are clearly erroneous.<sup>4</sup> In support, Mother points to the

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<sup>4</sup> Mother also challenges the trial court's finding that Father and Mother have similar earning capacities, education backgrounds, training, employment skills, and work experience and that neither of them has been absent from the job market for significant periods of time. Appellant's App. at 24 (finding 101); Appellant's Br. at 40. Our supreme court has concluded that

[w]here 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.

*Cannon v. Cannon*, 758 N.E.2d 524, 527 (Ind. 2001). The supreme court noted that considerations that may be relevant in determining how to divide the marital estate, such as payments made by one spouse to another pursuant to the terms of provisional orders and depletion of marital assets, are not appropriate considerations in determining whether spousal maintenance is warranted. *Id.* Accordingly, other than the reference to Mother's absence from the job market, the aforementioned finding does not contain proper considerations for a spousal maintenance determination.

following uncontroverted evidence: she has had medical problems for the past fifteen years; she has been diagnosed with impingement syndrome of her left shoulder, tendinitis of her elbow, degenerative disk disease of her lumbar spine, chronic low back pain, and degenerative disk disease of the cervical spine with cervical neuritis; she has had pain in the entire left side of her back and arthritis in her back, joints, elbows, shoulders, and knee;<sup>5</sup> she will be able to return to work only if her restrictions can be accommodated; she is restricted from doing any repetitive bending or twisting and any overhead lifting or lifting away from the body; she cannot lift more than fifteen pounds and cannot stand for more than two hours; she has been off work since April 16, 2009, as a result of an on-the-job injury; she is fifty years old and has done labor-intensive jobs her whole life and does not have a high school diploma or G.E.D. and is not qualified for an office job; Father earns three times as much as she does; and her only income is \$116 per week from Jennings County for the adoption of B.B.<sup>6</sup>

Although the evidence cited by Mother builds a forceful argument in favor of a spousal maintenance award, we note that she concedes that she might be able to return to work if her restrictions are accommodated. Also, we observe that the trial court found that in the past Mother has been effectively treated for her problems, and Mother does not challenge this finding. Appellant's App. at 23 (finding 91); Appellant's Br. at 39. While we may well

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<sup>5</sup> Again, Mother asserts that her monthly prescriptions total \$2,064.76, but as discussed in footnote 3, that sum is erroneous.

<sup>6</sup> Mother also argues that it would cause undue hardship if B.B. had to move out of his current school district. Appellant's Br. at 23. This consideration is not relevant to our review of the trial court's ruling on Mother's spousal maintenance request. *See Cannon*, 758 N.E.2d at 527.



have supported an award of spousal maintenance had the trial court granted it, we cannot say that the trial court abused its discretion in denying it. *See Showalter v. Brubaker*, 650 N.E.2d 693, 700 (Ind. Ct. App. 1995) (concluding that trial court did not abuse its discretion in denying wife’s request for spousal maintenance, even though wife had Crohn’s disease as well as other illnesses and injuries and quit her last job because of illness, where wife was able to earn substantial income in years prior to dissolution while suffering from illnesses and injuries, her health was improving, and she had resources to purchase insurance). Accordingly, we affirm the trial court’s denial of Mother’s request for maintenance.

#### *IV. Attorney’s Fees*

Finally, Mother contends that the trial court abused its discretion in denying her request for attorney’s fees. Indiana Code Section 31-15-10-1(a) provides,

The court periodically may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney’s fees and mediation services, including amounts for legal services provided and costs incurred before the commencement of the proceedings or after entry of judgment.

“We review a trial court’s award of attorney fees in connection with a dissolution decree for an abuse of discretion.” *Hartley v. Hartley*, 862 N.E.2d 274, 286 (Ind. Ct. App. 2007). “In determining whether to award attorney fees, the trial court must consider the parties’ resources, their economic condition, their ability to engage in gainful employment, and other factors that bear on the award’s reasonableness.” *Bean v. Bean*, 902 N.E.2d 256, 266 (Ind. Ct. App. 2009).

We observe that the value of the marital estate is not substantial, leaving both parties with meager resources. However, Father's weekly income is three times that of Mother's, and Father's income was based only on part-time employment. Because there is no evidence in the record showing that Father is incapable of working full-time, we would expect that his income will increase when he obtains full-time employment. Further, the same considerations that made the determination regarding spousal maintenance such a close case are pertinent to assessing Mother's future earning ability. Due to her physical impairments and job restrictions, her future earning ability is significantly less than that of Father's. These considerations weigh in favor of Father paying fifty percent of Mother's attorney's fees. Therefore, we reverse the trial court's denial of Mother's request for attorney's fees and remand with instructions to order Father to pay fifty percent of her attorney's fees directly to Mother's attorney.

### ***Conclusion***

We conclude that remand for further rulings on Mother's contempt petition is unwarranted, and we affirm the trial court's denial of Mother's request for spousal maintenance. However, we reverse the trial court's decision to divide the net marital estate equally and remand with instructions to order a 60/40 split of the net marital estate in Mother's favor. Finally, we reverse the trial court's denial of Mother's request for attorney's fees and remand with instructions to order Father to pay fifty percent of her attorney's fees.

Affirmed in part, reversed in part, and remanded.

BAKER, C.J., dissents in part with separate opinion.

DARDEN, J., concurs.

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**IN THE**  
**COURT OF APPEALS OF INDIANA**

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PATSY C. BATTIN,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 03A04-0912-CV-715
	)	
CURTIS R. BATTIN,	)	
	)	
Appellee-Petitioner.	)	

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**BAKER, Chief Judge, dissenting in part.**

Although I fully concur with the result reached by the majority on the first three of the four issues, I respectfully dissent on the issue of attorney fees. Father is employed, but neither party has significant assets—indeed, the trial court found that neither Mother nor Father could afford to remain in the marital residence. The trial court found, and Mother concedes, that she will be able to return to work if her restrictions are accommodated and that in the past, she has been effectively treated for her problems. I also believe that in refusing Mother’s fee request, the trial court was implicitly acknowledging that this case has been

over-litigated. Under these circumstances, and given that Indiana Code section 31-15-10-1(a) is discretionary rather than mandatory, I do not believe that the trial court abused its discretion in denying Mother's request for attorney fees.

Although I am tempted to dissent from the majority's decision to award a 60/40 split of the marital estate, I acknowledge that the majority is trying to restore equity and concur in full aside from the attorney fee determination.