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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE MARRIAGE OF:)

SCOTT WAYNE MOSBY,)

Appellant,)

and)

SHELLY M. MOSBY,)

Appellee.)

) No. 62A01-1011-DR-579

APPEAL FROM THE PERRY CIRCUIT COURT
The Honorable M. Lucy Goffinet, Judge
Cause No. 62C01-0903-DR-142

April 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

The marriage of Scott Wayne Mosby (“Husband”) and Shelly M. Mosby (“Wife”) was dissolved on July 8, 2010, and Husband was ordered to pay permanent maintenance. Husband now appeals, presenting the sole issue of whether the dissolution court abused its discretion by ordering him to pay Wife \$1,000 monthly. Wife also challenges the order, claiming that she should have been awarded \$1,778.14 monthly. We affirm.

Facts and Procedural History

Husband and Wife were married in January of 1990 and separated in August of 2009. Wife has multiple sclerosis. As of the final dissolution hearing, Wife had been confined to a wheelchair for twelve years, was unemployed, and was receiving SSI and private insurer disability payments. The parties’ adult son, who was employed full-time, lived with Wife. Husband was employed full-time and living with his mother.

Wife submitted an exhibit indicating that her household and personal expenses exceeded her disability income by \$1,778.14. She asked that the dissolution court award her that amount as permanent maintenance. Husband argued that Wife had adequate funds for her self-support and that some of the household expenses should be imputed to their son. The dissolution court ordered monthly payments of \$1,000, which was approximately \$800 less than that requested by Wife and \$1,000 more than that requested by Husband. This appeal ensued.

Discussion and Decision

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.

Under this statute, the trial court may make an award of spousal maintenance upon finding that a spouse's self-supporting ability is materially impaired. Bizik v. Bizik, 753 N.E.2d 762, 768 (Ind. Ct. App. 2001), trans. denied. A trial court's decision to award maintenance is within its discretion, and we will reverse only if the award is against the logic and effect of the facts and circumstances of the case, if the trial court has misinterpreted the law, or if the trial court disregards evidence of factors in the controlling statute. Mitchell v. Mitchell, 875 N.E.2d 320, 323 (Ind. Ct. App. 2007), trans. denied. "The presumption that the trial court correctly applied the law in making an award of spousal maintenance is one of the strongest presumptions applicable to the consideration of a case on appeal." Fuehrer v. Fuehrer, 651 N.E.2d 1171, 1174 (Ind. Ct. App. 1995), trans. denied.

Husband does not challenge Wife's incapacity. He argues only that there are extenuating circumstances militating against a permanent maintenance award, specifically, Wife receives disability payments of approximately \$22,000 per year, her medical treatment is covered by Medicaid and Medicare, Wife was awarded approximately \$25,000 from Husband's 401(k) plan, and their employed, adult son lives with Wife (presumably with ability to contribute to household expenses).

Husband testified that he is employed full time, that he had earned taxable income in 2009 of \$65,318, and that he had earned \$42,800 in the first half of 2010. Wife testified that she is permanently disabled and requires 24-hour assistance. She testified that their son lives

with her, works full-time in heating and air-conditioning, but contributes nothing toward household expenses or food. Wife submitted an exhibit detailing her income and living expenses, reflecting a monthly deficit of \$1,778.14.

The dissolution court's decision to award permanent maintenance is amply supported by evidence that Wife is permanently disabled and that there is a large disparity between Husband's and Wife's incomes. As for the amount of the award, we find the arguments unavailing. Although the dissolution court did not explicitly attribute a portion of the household expenses to the parties' son, the decision to award less than the \$1,778.14 requested effectively required some contribution from the son toward his own living expenses or food. Moreover, Wife's budget included a monthly entry of \$300 for payment of credit card debt. The equal division of the marital estate was effected, in part, by setting aside this marital debt to Wife. Had the dissolution court included the \$300 in a monthly maintenance award, this would have prevented the equal division of the marital estate.

In essence, Husband and Wife have each sought a reweighing of the evidence before the dissolution court. However, neither has demonstrated that the dissolution court acted contrary to law or in disregard of the facts and circumstances in the case. The amount of the award was within the range of the evidence presented. We find no abuse of discretion in the dissolution court's decision to award permanent maintenance, but in an amount less than that requested.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.