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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
	)	
CHERYL GROSECLOSE, by her next friend and Guardian, RITA DALBEY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 32A01-0901-CV-12
	)	
LANCE GROSECLOSE,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable Stephenie LeMay-Luken, Judge
Cause No. 32D05-0801-DR-6

August 18, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Cheryl Groseclose, by her next friend and guardian, Rita Dalbey, appeals from the trial court's order dissolving the marriage of Cheryl and appellee-petitioner Lance Groseclose and dividing the marital estate. Cheryl argues that the trial court erred by declining to award her spousal maintenance and by neglecting to consider tax consequences of its award to her of a 401(k) account. Finding no error, we affirm.

FACTS

Lance and Cheryl began dating at some point in 2005 and purchased a home together in April 2006. They were married on January 12, 2007, and no children were born of the marriage. She lived in Illinois during the early years of their relationship and they did not begin living together until they were married. They separated less than eight months later, in September 2007, and Cheryl moved back to Illinois at that time to live near her family. Lance filed a petition to dissolve the marriage on January 10, 2008.

On August 20, 2008, Cheryl, having learned that Lance was dating someone else, returned to Indiana and set Lance's home—the marital residence—on fire. The majority of the home and ninety percent of their personal possessions were destroyed or damaged. At the time of the final hearing, Lance was still in the process of restoring the home. On October 1, 2008, Dalbey was appointed to be Cheryl's plenary guardian based on Cheryl's "alleged disab[ility.]" Supp. App. p. 49.

The trial court held a hearing on the dissolution petition on November 6, 2008. Cheryl did not appear at the hearing; instead, Dalbey appeared on Cheryl's behalf. Dalbey testified that Cheryl is incapacitated and requested spousal maintenance. On November 20, 2008, the

trial court entered an order dissolving the parties' marriage. Because Cheryl and Lance both brought significant assets into the marriage and the marriage was of a very short duration, the trial court set aside the premarital assets to whichever party owned them coming into the marriage. The trial court further ordered that "assets or debts, and any increases in the value of assets and debts owned by either party during the marriage, be divided equally." Appellant's App. p. 18. Additionally, the trial court awarded Lance's 401(k) plan, worth $166,331.35, to Cheryl in the form of a QDRO as an equalization payment. The trial court denied the request for spousal maintenance:

> 42. No evidence was presented as to [Cheryl's] current physical condition. [] Dalbey has been appointed Plenary Guardian of the Person and Estate of [Cheryl]. No evidence was given as to why [Cheryl] could not attend Court for the Final Hearing. No detail was presented as to [Cheryl's] current mental condition other then [sic] that Ms. Dalbey was seeking out in-patient treatment facilities. Both Ms. Dalbey and [Lance] did however indicate that [Cheryl] has previously [attempted to commit] suicide.
>
> ***
>
> 15. Request for spousal maintenance is denied. [Cheryl] failed to establish that she is physically and/or mentally incapacitated to the extent that she cannot support herself. [Cheryl's] sister's opinion was all that was presented to the Court. Further this Court is awarding [Cheryl] $166,331.35 in 401(k) funds. [Cheryl] can access these funds if necessary.

Appellant's App. p. 19-21. Cheryl now appeals.

DISCUSSION AND DECISION

I. Spousal Maintenance

Cheryl first argues that the trial court erred by refusing to order Lance to pay spousal maintenance. A ruling on a request for spousal maintenance is wholly within the trial court's discretion, and we will reverse 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). The presumption that the trial court correctly applied the law in ruling on a request for spousal maintenance is one of the strongest presumptions applicable to the consideration of a case on appeal. Id.

Indiana Code section 31-15-7-2(1) provides that if the trial court

> finds a spouse to be . . . 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.

Our Supreme Court has commented that when a trial court finds that the above statutory criteria have been met, "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, 525-26 (Ind. 2006).

Here, Cheryl alleges that she is incapacitated and unable to support herself. Yet she has never stated what her incapacity is. She has never explained how her alleged incapacity materially affects her ability to obtain and retain employment. She offered no medical evidence whatsoever at the dissolution hearing. Indeed, she did not even appear at the hearing and offered no explanation for her absence. Dalbey testified but neglected to provide any sort of factual basis for a conclusion that Cheryl is incapacitated. The entirety of the

evidence presented in support of the request for maintenance was the following colloquy that occurred during Dalbey's testimony:

> Q. Is it also your request that . . . [Lance] pay [] spousal maintenance?
>
> A. Yes it is.
>
> Q. For the period of time when Cheryl continues to be incapacitated?
>
> A. Yes.
>
> Q. And those are requests in addition to the request for the attorney, the award of attorney fees?
>
> A. Yes.

Tr. p. 154.

The sole evidence—aside from the fact that Cheryl is unemployed—to which she directs our attention in support of a conclusion that she is incapacitated is a document appointing Dalbey to be Cheryl's guardian in Illinois. The document is signed by a clerk, not by a judge. It describes Cheryl as an "alleged disabled Person," implying that a finding of disability had not actually been made. Supp. App. p. 49. The document is one paragraph and contains no facts whatsoever about Cheryl and her alleged disability. Though Cheryl alleges that an Illinois court has made a finding of incapacity, she has never provided a document signed by a judge that, in fact, reaches such a conclusion.

She argues that we must give full faith and credit to judgments of courts in sister states. While that may be true, the only judgment provided to us is a guardianship; not a finding of incapacity. And even if we were to assume that a finding of incapacity is implied by the guardianship, there is absolutely nothing in the record tending to establish that

whatever unnamed incapacity Cheryl suffers from meets the statutory criteria set forth above. In other words, even if she is considered to be disabled by Illinois law, there is no evidence in the record that the disability materially affects her ability to support herself.

Cheryl argues that this evidence is not in the record because Lance failed to ask relevant questions of Dalbey at the hearing, but this argument is misplaced. As "the party requesting maintenance, the burden was on [her] to demonstrate the need." Riddle v. Riddle, 566 N.E.2d 78, 83 (Ind. Ct. App. 1991). Given this record, we cannot say that the trial court erred by finding that Cheryl did not meet that burden and declining to award spousal maintenance.

II. Property Division

The sole argument Cheryl makes relating to the property division concerns the award to her of Lance's 401(k) as an equalizing payment. Cheryl argues that the trial court erred by neglecting to consider the tax consequences if she were to make an early withdrawal of those funds. Cheryl, however, has offered no evidence whatsoever as to what the actual or potential tax consequences would be. It is her burden to provide that information to the trial court; the trial court has "no duty to sua sponte fill an evidentiary void." Riddle, 566 N.E.2d at 83.

And in any event, "[f]uture tax consequences incident to the disposition of [property] awarded one party are not a proper consideration[] before the trial court." Knotts v. Knotts, 693 N.E.2d 962, 968 (Ind. Ct. App. 1998); see also DeHaan v. DeHaan, 572 N.E.2d 1315, 1327 (Ind. Ct. App. 1991) (holding that the "potential tax liability upon a future disposition

of [property awarded in a dissolution proceeding] is remote and is not a direct consequence of the property disposition itself"). Given that Cheryl has offered no evidence of actual or potential tax consequences and that the trial court was not required to consider possible tax consequences if she were to decide at some point in the future to make an early withdrawal from the 401(k), we cannot say that the trial court erred in this regard.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.