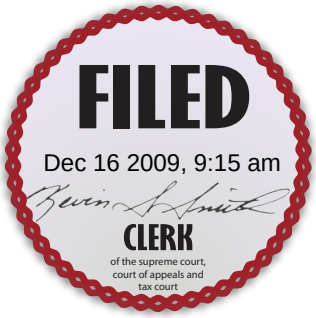
Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

CAROL K. FRED
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE THE MARRIAGE OF:	)	
	)	
CAROL K. FRED,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 49A05-0904-CV-182
	)	
MAURICE M. FRED,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CIVIL DIVISION, ROOM IV
The Honorable Cynthia J. Ayers, Judge
The Honorable Deborah Shook, Master Commissioner
Cause No. 49D04-0707-DR-29798

December 16, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Respondent, Carol K. Fred (Carol), appeals the trial court's denial of spousal maintenance under Ind. Code § 31-15-7-2 and extension of health insurance coverage.

We affirm.

ISSUES

Carol raises one issue on appeal, which we restate as the following two issues:

(1) Whether the trial court erred by denying her request for incapacity maintenance; and

(2) Whether the trial court abused its discretion by refusing to extend her health insurance coverage.

FACTS AND PROCEDURAL HISTORY

Maurice Fred (Maurice) and Carol were married in 1985 and during the course of their marriage, they had three children: M.F., born in 1990 and is now emancipated; H.F., born in 1991; and Me. F, born in 1998.[1] On July 17, 2007, Maurice filed a Petition for Separation. A hearing was held on February 13, 2009. During the hearing, Carol requested both incapacity maintenance and rehabilitative maintenance. She also asked that Maurice cover her in a COBRA[2] policy for three years or until she would be able to provide her own health insurance.

---

[1] Me. F is deceased.

[2] COBRA stands for Consolidated Omnibus Reconciliation Act, and grants certain former employees, retirees, spouses, and dependent children the right to a temporary continuation of health coverage in limited circumstances. *See* www.cobrainsurance.com.

On March 12, 2009, the trial court issued a Decree of Dissolution of Marriage. In the Decree, the trial court made the following Findings of Fact, in relevant part:

> 6. Custody: Parties agree that [Maurice] shall have primary physical custody of minor, [H.F.], born November 11, 1991.
>
> . . .
>
> 8. Child Support: The Court finds that [Carol] has imputed income of $300.00 per week as she has little to no living expenses; [Carol] was working full-time at Papa John's Pizza as a shift manager prior to the filing of the divorce; [Carol] was able to work 67.85 hours at $8.00 per hour from 01/01/2009-01/15/09 at her current employment and was able to work 74.32 [hours] from 01/16/09-01/31/09.
>
> The Court finds that [Maurice] has a weekly income in the amount of $830.00 per week; the Court finds [Carol] has 52 overnights; and [Maurice] pays weekly health care expenses for [H.F.] in the amount of $25.00.
>
> Therefore, the Court orders [Carol] to pay weekly child support to [Maurice] in the amount of $41.00 per week beginning 02/13/09 . . . .
>
> . . .
>
> 10. Health Care: The Court denies [Carol's] request for [Maurice] to maintain health insurance on behalf of [Carol].
>
> . . .
>
> 17. Maintenance: The Court denies [Carol's] request for maintenance, and in support thereof finds: [Maurice] does not have financial means to pay maintenance; [Carol] has minimal to no living expenses; [Carol] is capable to work as she has worked during and prior to the marriage; [Carol] has worked during the past 19 months this matter has been pending; she has not received maintenance during the 19 months this matter has been pending and she has paid over $23,000.00 in debt through other sources; she is currently employed; [Carol] has a pending Workers Compensation claim which was dismissed due to [Carol's] lack of compliance with the doctor's treatment plans; and

> [Maurice] maintained health insurance on behalf of [Carol] during the past 19 months.[3]

Carol now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

We initially note that Maurice has not filed an appellees' brief. Where the appellee fails to file a brief on appeal, we may, in our discretion, reverse the trial court's decision if the appellant makes a *prima facie* showing of reversible error. *Johnston v. Johnston*, 825 N.E.2d 958, 962 (Ind. Ct. App. 2005). In this context, *prima facie* error is defined as "at first sight, on first appearance, or on the face of it." *Orlich v. Orlich*, 859 N.E.2d 671, 673 (Ind. Ct. App. 2006). This rule was established for our protection so that we can be relieved of the burden of controverting the arguments advanced in favor of reversal where that burden properly rests with the appellee. *Johnston*, 825 N.E.2d at 962.

When the trial court enters findings of fact and conclusions of law in support of a dissolution decree, on appeal, we will not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. *Elkins v. Elkins*, 763 N.E.2d 482, 484 (Ind. Ct. App. 2002). Findings are clearly erroneous when the record contains no facts to support them either

[3] Carol did not file an Appellant's Appendix. This quotation derives from a copy of the Decree of Dissolution of Marriage, filed on March 12, 2009 in the Marion Superior Court, which is attached to the Appellant's Case Summary filed with the Clerk of this Court on September 15, 2009. The copy of said Decree included in Appellant's Brief appears to be computer generated and formatted differently excluding numeration of paragraphs.

directly or by inference. *Id*. The judgment is clearly erroneous if the findings do not support the conclusions of law or the conclusions of law do not support the judgment. *Id*.

II. *Incapacity Maintenance*

Carol, acting *pro se*, essentially argues that the trial court erred when it denied her request for spousal maintenance pursuant to I.C. § 31-15-7-2(1). Specifically, she contends that she is entitled to incapacity maintenance because she suffers from depression and anxiety, making it difficult for her to work full-time.

We note that *pro se* litigants are held to the same standard as licensed attorneys. *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005). The purpose of the appellate rules, especially Indiana Appellate Rule 46 governing briefs, is to aid and expedite review, as well as to relieve the appellate court of the burden of searching the record and briefing the case. *Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004). Indiana Appellate Rule 46(A)(8)(a) states that the argument section of an appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . .. " It is well settled that we will not consider an appellant's argument on appeal when he or she has failed to present that argument supported by authority and references to the record as required by the rules. *Shepherd*, 819 N.E. at 463. "If we were to address such arguments, we would be forced to abdicate our role as an impartial tribunal and would instead become an advocate for one of the parties." *Id*. Here, Carol does not cite to any authority or other references except I.C § 31-15-7-2 and fails to

make cogent and coherent arguments. Thus, Carol's failure to comply with Appellate Rule 46 governing briefs by failing to provide us with citations to authority supporting her claims results in the waiver of those claims.

Waiver notwithstanding, Carol has not established that the trial court erred in denying her request for incapacity maintenance. "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) (citing *McCormick v. McCormick*, 780 N.E. 2d 1220, 1224 (Ind. Ct. App. 2003)). In the absence of an agreement between the parties, the trial court's authority to order maintenance is limited to three options: (1) incapacity maintenance for a spouse who cannot support himself or herself; (2) caregiver maintenance for a spouse who must care for an incapacitated child; and (3) rehabilitative maintenance for a spouse who needs additional education or training before seeking a job. I.C. § 31-15-7-2; *Cannon v. Cannon*, 758 N.E.2d 524, 525-26 (Ind. 2001).

Here, there was no evidence presented to the trial court that H.F. is incapacitated. Carol contends that she is eligible under I.C. § 31-15-7-2 (1) and (3). In her brief, Carol makes the argument that she is entitled to incapacity maintenance because of her mental health history. However, Carol only mentions she is entitled to rehabilitative maintenance by merely citing to the statute. (Appellant's Br. p. 6). She makes no argument as to why she is entitled to rehabilitation maintenance. As a result, she has waived the argument. *See Shepherd*, 819 N.E.2d at 463.

A trial court's decision to award spousal maintenance is purely within its discretion, and we will reverse if the award is against the logic and effect of the facts and circumstances of the case. *Matzat v. Matzat*, 854 N.E.2d 918, 920 (Ind. Ct. App. 2006). Pursuant to I.C. § 31-15-7-2(1), the trial court may order incapacity maintenance "[i]f 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 . . . ." *See Biztik v. Biztik*, 753 N.E.2d 762, 768 (Ind. Ct. App. 2001), *trans. denied*. However, even if a trial court finds that a spouse's incapacity materially affects her ability to support herself, a maintenance award is not mandatory. *Id*. at 769.

In this case, Carol testified that she "cannot work more than twenty hours [per week] without suffering severe anxiety attacks where [she] just go[es] home and sleep[s]." (Transcript p. 138). However, Carol also testified that she has in fact worked more than twenty hours a week, specifically during January 16, 2009 to January 31, 2009:

> [PLAINTIFF'S COUNSEL]: [] You're working. . . your testimony is today you're working twenty to twenty-five hours per week.
>
> [CAROL]: Yes
>
> [PLAINTIFF'S COUNSEL]: Despite the last month you've worked more than that. You would agree?
>
> [CAROL]: Those were exceptional cases where I filled in when somebody quit.
>
> [PLAINTIFF'S COUNSEL]: Alright. So you are able to work if you have to.
>
> [CAROL]: If I feel I can.

(Tr. pp. 137-38). Based on her own testimony, she has the ability to work more hours if she wants to. Additionally, during the 19 months while this case was pending, she was even able to pay off $23,000 in debt. Taken together, Carol has not demonstrated that her ability to support herself is materially affected. Thus, we conclude that the trial court did not err when it denied Carol's request for incapacity maintenance.

III. *COBRA Coverage*

Carol argues that she is entitled to COBRA health insurance payments for three years or until she is able to obtain health insurance on her own. In its Decree of Dissolution of Marriage, the trial court considered testimony relating to the parties' financial situations and found that Maurice was not required to continue Carol's health insurance coverage, as he had done during the past 19 months while the case was pending. As the custodial parent, Maurice is not only responsible for his own medical insurance, but also for H.F.. 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 Carol's request that Maurice provide COBRA insurance coverage.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not err when it failed to order spousal maintenance pursuant to I.C. § 31-15-7-2(1) or extend her health insurance coverage.

Affirmed.

VAIDIK, J., and CRONE, J., concur.