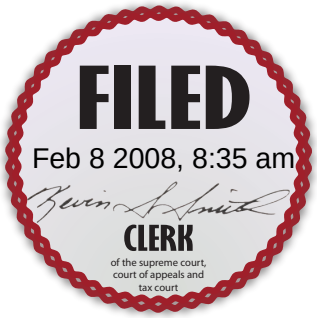

ATTORNEY FOR APPELLANT:

DEBORAH K. SMITH
Thorntown, Indiana

ATTORNEY FOR APPELLEE:

MARCEL KATZ
Lafayette, Indiana

IN THE
COURT OF APPEALS OF INDIANA

DEBRA HAFENBRIDLE,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 12A04-0705-CV-277
	)	
GARY HAFENBRIDLE,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE CLINTON CIRCUIT COURT
The Honorable Kathy R. Smith, Special Judge
Cause No. 12C01-0507-DR-314

February 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Debra Hafenbridle ("Debra") appeals the trial court's division of marital property, maintenance order, and order for payment of college expenses in her marital dissolution with Gary Hafenbridle ("Gary"). Specifically, Debra raises the following restated issues:

I. Whether the trial court abused its discretion in ordering Gary to pay Debra $50.00 per month in maintenance support;

II. Whether the trial court abused its discretion in ordering a fifty-fifty split of the marital assets;

III. Whether the trial court's decision to require Gary to pay one-third of the parties' youngest child's college expenses was clearly erroneous, and whether the trial court abused its discretion in not requiring Gary to reimburse Debra for her payment of the parties' youngest child's college expenses incurred prior to the final order.

We affirm.

FACTS AND PROCEDURAL HISTORY

The parties married in 1990. During the course of their marriage, Gary adopted Debra's two children, A.H., born June 16, 1983, and J.H., born May 25, 1985. During that same time, the parties acquired real and personal property as well as debt. In 2005, Debra filed a petition for dissolution.

At the time of the final hearing on the dissolution petition, Gary was employed at Subaru of Lafayette and earned approximately $56,194.00 a year. At the final hearing, Gary testified that he desired to retire soon but had not yet decided when he would do so or whether he would do so. *Tr.* at 134. Debra was not employed and received social security disability benefits of approximately $707.00 a month ($8,484.00 a year). The parties' children continued to live with Debra, even while J.H. was attending college. Further, at the time of the final hearing, a provisional order was in place that required

Gary to pay Debra's health insurance, $250.00 per week for temporary spousal maintenance, $135.00 per week for J.H.'s school related expenses, J.H.'s health insurance, and, after Debra pays $300.00 towards J.H.'s uninsured medical expenses, 87% of the remaining healthcare costs for J.H.

After the final hearing, the trial court found several facts and made several conclusions. Namely, the trial court found and concluded that based on the length of the parties' marriage, and the division of assets to date, Gary and Debra would split the marital property fifty-fifty. Specifically, Debra was given the marital residence with its mortgage obligation, the Regions Bank joint checking account, nearly one-third of Gary's 401(K) (QDRO), one-half of the parties' credit card debt, one-half of the debt owed to Debra's parents, and two vehicles. Gary received the remaining portions of the 401(k), bank account, credit card debt, and debt to Debra's parents. He also received two trucks and was ordered to pay half of Debra's attorney fees and the rehabilitative expert's fees. The trial court found that Gary's joint tenant interest with a right of survivorship in a piece of Pennsylvania real estate was a future interest, and therefore did not divide it.

Pertaining to spousal maintenance and Debra's incapacity, the trial court found that Michael Blankenship, the rehabilitative expert who testified on behalf of Debra, had previously misstated Debra's global assessment functioning score ("GAF") low at 34, when in actuality it was 52, which is the "mild range of difficulty in keeping a job." *Appellant's App.* at 9. Dr. Haider, Debra's endocrinologist, stated that she has normal growth factor and hormone levels and reassured no further intervention was required. *Id.* Dr. Scheffler's report indicated that Debra still complained of chronic headaches and

occasional palpitations. *Id.* The trial court found that Debra has not had steady employment over the last decade and has received $707.00 per month in social security disability benefits since 1996. *Id.* The trial court found that Debra's ability to support herself had been materially affected but that she could find part-time employment to offset her monthly expenses. As such, the trial court modified the provisional spousal maintenance award, which had required Gary to pay $250.00 a week, down to $50.00 a week.

Regarding J.H.'s college expenses, the trial court concluded that the parties agreed to pay one-third of J.H.'s expenses so long as she maintained a "C" grade average and was enrolled in at least nine credit hours. Prior to the final hearing, J.H. had paid for her college expenses through student loans, grants, and financial aid. Further, while Gary was ordered to continue to pay J.H.'s medical insurance, the trial court found that Gary did not owe any past educational expenses. Debra now appeals.

DISCUSSION AND DECISION

As an initial matter, we note that when, like here, a trial court enters findings of fact and conclusions thereon, we apply a two-tiered standard of review. *Hyde v. Hyde*, 751 N.E.2d 761, 765 (Ind. Ct. App. 2001). We determine first whether the evidence supports the findings, and second, whether the findings support the judgment. *Id.* Under the first tier, we review the trial court's findings for clear error. *Id.* Findings are clearly erroneous if the record lacks any probative evidence to support them. *Id.*

I. Spousal Maintenance

A trial court's decision to award maintenance is within its discretion, and we will only 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) (citing *Augspurger v. Hudson*, 802 N.E.2d 503, 508 (Ind. Ct. App. 2004). "A maintenance ... award is designed to help provide for a spouse's sustenance and support." *McCormick v. McCormick*, 780 N.E.2d 1220, 1224 (Ind. Ct. App. 2003). "The essential inquiry is whether the incapacitated spouse has the ability to support himself or herself." *Id.*; *see also* IC 31-15-7-2(1). Our Supreme Court has held that a trial court's discretion to award incapacity maintenance under IC 31-15-7-2(1) is limited to those instances where the trial court has found that the spouse's ability to work and support himself or herself is materially affected. *Cannon v. Cannon*, 758 N.E.2d 524, 526 (Ind. 2001).

Debra argues that the trial court abused its discretion in its award of spousal incapacity maintenance because her disability prevented her from obtaining any gainful employment. She contends that the trial court's award of $50.00 per month is too low and is therefore, against the logic and effect of the facts and circumstances before it. *See Bizik v. Bizik*, 753 N.E.2d 762, 768 (Ind. Ct. App. 2001).

In *Bizik*, husband was ordered to pay wife $400.00 per week in spousal maintenance even when the court awarded the wife 70% of the marital estate. *Id*. at 768. This court noted that, even if the trial court finds that a spouse's ability to work is materially affected, the trial court maintains the discretion to award maintenance. *Id.* at

769. We stated that we would presume the trial court considered all the relevant statutory factors and concluded that the trial court's order was within its discretion. *Id.*

In *Matzat*, while we recognized that the receipt of social security benefits may support the award of incapacity maintenance, we ultimately held that without *any* medical evidence of a disability and only two applications for social security, one of which was denied, the trial court would abuse its discretion by awarding maintenance. *Matzat*, 854 N.E.2d at 920-21 (citing *Paxton v. Paxton*, 420 N.E.2d 1346, 1350 (Ind. Ct. App. 1981)). However, where there is competent medical evidence of incapacity, the trial court has the discretion to determine: 1) whether a spouse is incapacitated; 2) whether the spouse is entitled to maintenance; and, if so, 3) to what extent. *See* IC 31-15-7-2(1).

Here, we do not find that the trial court's decision was against the logic and effect of the facts and circumstances before it. Initially, the trial court awarded temporary maintenance of $250.00 per week[1] based in part on Debra's receipt of social security disability benefits and on Dr. Blankenship's incorrect evaluation that Debra's GAF indicated she suffered "major impairment in several areas, such as work . . . . [and] that she presents a profile of an individual who is unable to return to the workforce." *Appellant's App.* at 153-54. During the final hearing, however, Dr. Blankenship testified that he misstated Debra's GAF and that her actual GAF indicated she was in the mild

[1] In *Paxton v. Paxton*, 420 N.E.2d 1346, 1349 (Ind. Ct. App. 1981), we noted that a temporary maintenance award is not dependent on a disability finding, and may be awarded at the trial court's discretion. Contrary to Debra's argument, the trial court was not required to show a substantial change in circumstances to reduce the maintenance award.

range of difficulty in keeping a job.[2] *Tr.* at 14-16. Regardless of the rating, Debra continued to suffer headaches and took Morphine and Topomax for the pain. Dr. Blankenship testified that his mistake did not change his overall conclusions. *Tr.* at 21. The trial court weighed the evidence and assessed the credibility of the witnesses and concluded that Debra was incapacitated to the extent that she was entitled to $50.00 of maintenance per week but could still work part-time to offset her monthly expenses. This finding was not an abuse of discretion.

II. Property Division

Debra contends that her incapacity, her maintenance award, and Gary's ability to earn a higher income entitled her to more than half of the marital property, and the trial court's failure to award her more than the fifty-fifty presumptive split amounted to an abuse of discretion.[3] We apply a strict standard of review to a trial court's marital property distribution decision. *Hyde*, 751 N.E.2d at 765. The division of marital property is left to the sound discretion of the trial court. *Id.* "The presumption that a dissolution court correctly followed the law and made all the proper considerations in crafting its property distribution is one of the strongest presumptions applicable to our considerations on appeal." *Id.*

---

[2] Dr. Blankenship cautioned that physicians and psychologists calculate GAF ratings in terms of impairment and not disability. *Tr.* at 16. This testimony did not pertain to Debra's diagnosis, but was a general statement.

[3] Debra mentions that Gary's joint tenant interest in the Pennsylvania property was not included in the marital property but fails to argue that it should have been or cite any authority to support why the trial court's finding that the property was a future interest was error. *Appellant's Br.* at 7.

Under IC 31-15-7-5, a party may rebut the presumptive fifty-fifty division of marital property with evidence regarding the extent to which the property was acquired before the marriage and through inheritance or by gift, the economic circumstances of either party at the time the property is to be divided, the conduct of the parties during the marriage relating to disposition or dissipation of property, and the earnings capacity of either party. In reviewing a trial court's disposition of the marital property, we look at "what the court did, not what it could have done[,]" or what we would have done. *Bizik*, 753 N.E.2d at 766 (citing *Chase v. Chase*, 690 N.E.2d 753, 756 (Ind. Ct. App. 1998)); *Augspurger*, 802 N.E.2d at 512.

In *Augspurger*, the trial court initially awarded the wife 90% of the marital property, but after the husband moved to correct error, it modified the award to a fifty-fifty split. 802 N.E.2d at 512. The wife appealed, claiming that the trial court's initial award was appropriate given her medical condition, the medical expenses she would incur as a result of her condition, and the maintenance awarded. *Id.* We held that while there was evidence to support the 90% award, the award was not mandated. *Id.* at 513. We noted that the trial court's award of over $400.00 in maintenance and wife's attorney's fees, even given wife's medical condition, rendered the fifty-fifty split just and reasonable. *Id.*

Here, Debra has not shown that the trial court's decision was contrary to the logic and effect of the facts and circumstances before it. *See id.* Although Debra did not receive as much in maintenance as the wife in *Augspurger*, she was receiving social security disability benefits and she did not have the same medical expenses. *Id.* Debra

was found to be capable of supporting herself on a part-time basis and could reduce her monthly expenses by liquidating the equity in the marital home and moving to a less expensive residence. Gary was nearing retirement and had monthly expenses that further supported the trial court's decision. The trial court's award was not an abuse of discretion.

III. Educational Expenses

Lastly, Debra argues that the trial court abused its discretion in: 1) dividing J.H.'s educational expenses because it failed to consider J.H.'s decision to live at home; and 2) failing to require Gary to reimburse her for previous educational and medical expenses. We review a trial court's apportionment of college expenses for clear error; however, we review the trial court's order to pay education expenses for an abuse of discretion. *Carr v. Carr*, 600 N.E.2d 943, 945 (Ind. 1992).

The commentary to Indiana Child Support Guideline 6 provides that in determining educational expenses "[r]oom and board will also be included when the student resides on campus or otherwise is not with the custodial parent." Here, because J.H. was emancipated and, therefore did not reside with a custodial parent, this directive does not apply. Nevertheless, Debra has not shown that the trial court's decision not to offset Debra's or J.H.'s portion of J.H.'s educational expenses was clearly erroneous. Certain expenses of J.H.'s residence in Debra's home would be incurred in any event. J.H. herself can offset other expenses by payment or providing services. Finally, the trial court maintains discretion to determine whether a party shall be required to reimburse the other party for their emancipated child's prior medical and educational expenses. *Carr*,

600 N.E.2d at 945. Here, under the temporary order, Gary was already required to pay $135.00 a week for J.H.'s educational expenses. Debra has not shown that the trial court's decision not to require Gary to pay Debra for additional expenses was an abuse of its discretion.

Affirmed.

RILEY, J., and MAY, J., concur.