

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2014 IL App (4th) 130291-U

NO. 4-13-0291

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 7, 2014

Carla Bender

4th District Appellate

Court, IL

In re: MARRIAGE OF)	Appeal from
MARTA L. GRIFFIN,)	Circuit Court of
Petitioner-Appellee,)	McLean County
and)	No. 11D580
MICHAEL A. GRIFFIN,)	
Respondent-Appellant.)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Appleton and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* Ex-husband made insufficient showing that trial court abused its discretion in awarding ex-wife \$620 per month in permanent maintenance.

¶ 2 On November 22, 2011, petitioner, Marta L. Griffin, filed a petition for dissolution of marriage against respondent, Michael A. Griffin. On March 11, 2013, the trial court issued a judgment of dissolution of marriage, incorporating an order issued by the court on January 24, 2013, awarding Marta \$620 per month in permanent maintenance.

¶ 3 On appeal, Michael argues the trial court abused its discretion in awarding Marta permanent maintenance. We affirm.

¶ 4 I. BACKGROUND

¶ 5 Michael and Marta were married on September 29, 1990. Three children were

born as a result of the marriage, Drake (born January 16, 1993), Cassidy (born May 30, 1996), and Brock (born November 20, 2001). On November 22, 2011, Marta filed a petition for dissolution of marriage.

¶ 6 On October 31, 2012, the trial court made a docket entry stating the parties planned to enter into a joint parenting agreement and a trial on the remaining issues remained for November 14, 2012. On November 14, 2012, the court made a docket entry stating it approved the parties' joint parenting agreement and heard the remaining issues, taking the matter under advisement.

¶ 7 On January 24, 2013, the trial court entered an order stating it "heard the testimony in open court of the parties, and *** considered all the evidence, as well as the arguments of counsel," and being "fully advised in the premises," awarded Marta \$620 per month in permanent maintenance. The court found Michael's expenses inflated, "that he has other resources for his own support, and that his income resources (based upon the court's imputation of earnings capacity) are sufficient to meet a maintenance obligation." The court found "apparently no dispute" that Michael was terminated from his employment with State Farm Insurance Company due to his recording of false time cards. The court observed that "such conduct occurred repeatedly, even following admonitions concerning his obligation to record his start times accurately." Based on its consideration of the evidence, the court was "persuaded that it is more probably true than not true that the Respondent was fired from his \$49,000 per [sic] job position because of his misconduct, that the financial crisis he and his wife are in at the present time, including foreclosure of the marital home and his intention to take bankruptcy, are clearly attributable to his misconduct." The court further found it was "justified in regarding

[Michael's] earning capacity as equivalent to the compensation he was receiving at that time and to determine his obligation accordingly."

¶ 8 The trial court also awarded Michael and Marta various items of personal property and bank accounts. On March 11, 2013, the court issued the judgment of dissolution of marriage. This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Michael argues the trial court abused its discretion in awarding \$620 per month in permanent maintenance to Marta. We disagree.

¶ 11 Section 504(a) of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/504(a) (West 2010)) sets forth 12 factors for the trial court to consider in deciding whether to grant a temporary or permanent maintenance award, including the following:

- "(1) the income and property of each party, including marital property apportioned and non[]marital property assigned to the party seeking maintenance;
- (2) the needs of each party;
- (3) the present and future earning capacity of each party;
- (4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career

opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not seek employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties;

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable."

The propriety of a maintenance award is within the trial court's discretion, and the court's determination will not be disturbed absent an abuse of discretion. *In re Marriage of Sturm*, 2012

IL App (4th) 110559, ¶ 3, 970 N.E.2d 117. "Where an abuse of discretion in awarding or denying maintenance is claimed, the burden of showing such an abuse rests with the claiming party." *In re Marriage of Homann*, 276 Ill. App. 3d 236, 240, 658 N.E.2d 492, 495 (1995).

¶ 12 This case illustrates the importance of ensuring a proper record is made at the trial court level. Here, the record contains neither a report of proceedings nor a certified bystander's report setting out what occurred on November 14, 2012. At that hearing on the remaining issues, Michael and Marta both testified by stipulation and presented evidence. Michael insists there was no witness testimony and that the court only considered documentary evidence. However, his assertion is belied by the trial court's statement in the judgment of dissolution of marriage: "and this Court having heard the stipulation as to the testimony of the Petitioner and Respondent." According to the judgment of dissolution of marriage entered by the trial court, Michael and Marta presented their testimony by stipulation, and the court considered this stipulated testimony in reaching its determination. Further, nothing in the record indicates which of the exhibits, if any, were offered on November 14, 2012, may be considered as evidence. Absent a stipulation between the parties, matters not properly part of the record cannot be considered by a court of review even though they may be included in the record. *Matter of Saline Branch Drainage District*, 172 Ill. App. 3d 574, 584, 526 N.E.2d 939, 946 (1988). Here, the record contains neither a stipulation between the parties that the exhibits be considered by this court nor an indication by the trial court that the exhibits were admitted into evidence.

¶ 13 Michael, as appellant, bears the burden to present a sufficiently complete report of proceedings to support his contentions of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92, 459 N.E.2d 958, 959 (1984). When the record on appeal is inadequate, "the reviewing court will

presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis." *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319, 789 N.E.2d 1248, 1252 (2003); see also *In re Marriage of Newberry*, 346 Ill. App. 3d 526, 531, 805 N.E.2d 640, 644 (2004).

¶ 14 In the instant case, the trial court awarded Marta permanent maintenance of \$620 per month. Marta contends no abuse of discretion occurred where the court properly imputed income to Michael in calculating maintenance. We agree. Specifically, the court based its maintenance award on its finding that Michael's expenses were inflated, he had other resources for his own support, and "his income resources (based upon the court's imputation of earnings capacity) are sufficient to meet a maintenance obligation." Michael further argues the court erred by improperly considering what he terms "marital misconduct," the conduct leading to his firing by his employer, in determining the award of permanent maintenance to Marta. He points to section 504(a) which authorizes a court to grant maintenance but "without regard to marital misconduct." 750 ILCS 5/504(a) (West 2010). Suffice it to say the employment misconduct Michael was accused of is not "marital misconduct" per section 504(a) and thus Michael's argument is baseless.

¶ 15 Michael also argues the trial court failed to consider the current income of the parties. However, a trial court's determination as to the awarding of maintenance is presumed to be correct. *In re Marriage of Krane*, 288 Ill. App. 3d 608, 618, 681 N.E.2d 609, 616 (1997). In reviewing a matter under the trial court's discretion, "reversal is justified only when it is obvious that the trial court acted arbitrarily or without conscientious judgment." *In re Marriage of Schrimpf*, 293 Ill. App. 3d 246, 252, 687 N.E.2d 171, 175 (1997).

¶ 16 Michael has not presented a sufficient record to establish the stipulated testimony of the parties involved or the exhibits in evidence. Given the insufficient record, we are unable to say the trial court abused its discretion in making its award of maintenance. Further, Michael's argument in his brief offers nothing to require the conclusion that the trial court acted arbitrarily or without conscientious judgment. The court's order indicated it heard the evidence and had been fully advised. Thus, without more, we find no abuse of discretion.

¶ 17 Michael also argues the trial court improperly imputed income to him where (1) he was involuntarily terminated from his employment, (2) "there was no evidence submitted at trial to suggest that Michael failed to take advantage of any employment opportunities after he was terminated," and (3) "there was no evidence offered to support the conclusion that Michael was attempting to evade support when terminated from his employment." Michael argues a lack of evidence in the record for the trial court to impute income but, as stated above, he has failed to provide a sufficient record of the proceedings below. Thus, he is unable to support his claims of error.

¶ 18 In this case, Michael has not pointed to any evidence that would lead us to conclude the trial court abused its discretion in its award of maintenance.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the trial court's judgment.

¶ 21 Affirmed.