

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).

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> THE MARRIAGE OF)	Appeal from the Circuit Court
MARY C. STIRNICHUK, n/k/a MARY)	of Lake County.
WAGNER,)	
)	
Petitioner-Appellee,)	
)	
and)	No. 13-D-1808
)	
KEVIN M. STIRNICHUK,)	
Respondent)	Honorable
)	Joseph V. Salvi,
(E.S., Intervenor-Appellant).)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion by refusing to allow intervenor to participate in the trial, as intervenor did not identify any relevant evidence that she would have introduced; (2) the trial court did not abuse its discretion by awarding the bulk of the marital property to petitioner despite intervenor's pending judgment for damages against respondent: the court's award to petitioner was appropriate for her needs, and the court otherwise protected intervenor's interest by prohibiting respondent from transferring any assets awarded to him.

¶ 2 Petitioner, Mary C. Stirnichuk, petitioned to dissolve her marriage to respondent, Kevin M. Stirnichuk. E.S., through her father and next friend, Brian S., filed a petition to intervene and

an emergency motion to prohibit respondent from transferring or disposing of assets. The intervenor alleged that she was in the process of obtaining a large civil judgment against respondent and asked the trial court to consider her interests when dividing the parties' marital property. The trial court granted the petition to intervene, but refused to allow the intervenor's attorney to participate in the proceedings. Following a hearing, the trial court awarded virtually all of the parties' assets to petitioner while assigning each party his or her individual debts. The intervenor appeals, contending that the court erred by (1) refusing to allow her attorney to participate in the trial; and (2) awarding the vast majority of the parties' property to petitioner without accounting for the intervenor's potential judgment lien. We affirm.

¶ 3 The intervention petition alleged that the intervenor had recently filed a complaint against respondent and his employer, Omnicell, Inc. The complaint alleged that respondent engaged in sexual assault and child pornography with the intervenor. As a result, respondent had pleaded guilty to three counts of predatory criminal sexual assault of a child and two counts of child pornography. The court in the civil case had awarded the intervenor a prejudgment attachment of respondent's property (see 735 ILCS 5/4-101 (West 2014)) and had prohibited respondent from transferring or disposing of any assets without the court's permission. In spite of this order, the intervenor's attorney had recently learned that respondent was attempting to transfer or dispose of his assets. Respondent was also attempting to expedite the dissolution action so that it would conclude before the civil action. The intervenor had recently obtained summary judgment against respondent on the issue of liability, but damages had not been awarded. The intervenor asserted that any order entered in the dissolution action without accounting for the intervenor's interest would cause her irreparable harm. The petition included a copy of the complaint in the

civil case, the partial summary judgment order, and the order prohibiting the transfer of assets. Respondent was eventually sentenced to 45 years' imprisonment in the criminal case.

¶ 4 The dissolution court entered a bifurcated judgment dissolving the marriage but reserving all further issues. The court granted the petition to intervene. However, the court denied the request of the intervenor's attorney to question witnesses and present evidence at the trial on issues relating to the division of the marital property. The court offered to allow the intervenor's counsel to remain in the courtroom during the proceedings, but he declined, stating, "If I can't ask any questions or present any further argument, then I won't stay."

¶ 5 Petitioner was the only witness at trial. She testified that her monthly expenses exceeded her income and that she lived on credit cards. The marital home, where she resided, required substantial repairs that she could not afford. Respondent used to perform such repairs, but was now incarcerated. Petitioner had possession of several vehicles, some inoperable, which were owned either jointly or solely by respondent. She had several bank accounts with minimal balances.

¶ 6 Petitioner's attorney argued that respondent's needs while in prison would be minimal whereas petitioner was unable to meet her monthly expenses. Accordingly, she should receive all of the marital assets except for an investment account in respondent's name. That account was worth approximately \$9000. While noting that respondent would still require some assets while in prison, respondent's attorney did not disagree with the proposed division of assets.

¶ 7 The trial court awarded petitioner the marital residence with an approximate value of \$100,000, her retirement assets, 50% of respondent's retirement plan, several vehicles, and any savings, checking, or other financial institution accounts in her name. Respondent was awarded the investment account, 50% of his retirement plan, and any accounts solely in his name. Each

party was held responsible for all debts held in his or her individual name. Respondent was prohibited from transferring or disposing of any of his assets except as directed by the court in this matter or in the civil sexual-assault action. The intervenor filed a timely notice of appeal.

¶ 8 The intervenor first contends that the trial court erred by refusing to allow her, through her attorney, to actively participate in the proceedings after it granted her petition to intervene. The intervention statute gives the trial court broad discretion to prevent intervention from hampering or delaying the litigation (*City of Chicago v. John Hancock Mutual Life Insurance Co.*, 127 Ill. App. 3d 140, 144 (1984)), providing that “the applicant shall not interfere with the control of the litigation, as justice and the avoidance of undue delay may require” (735 ILCS 5/2-408(f) (West 2014)).

¶ 9 Initially, we note that the parties’ attorneys argued their positions at an unreported hearing. When the court went back on the record, it merely announced its ruling. Thus, we do not know with specificity what arguments were presented to the court or the basis for its decision. At oral argument, the intervenor’s attorney asserted that the court never announced a reason for its decision. Nevertheless, to the extent the parties’ arguments likely informed that decision, we are not privy to them. Where the issue on appeal depends on what occurred during a hearing, the issue is not subject to review absent a record of the proceeding. Instead, we presume “ ‘that the order entered by the trial court [is] in conformity with the law and had a sufficient factual basis.’ ” *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (quoting *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984)). Thus, we presume that the court’s order had a sufficient legal foundation.

¶ 10 In any event, we are not persuaded that the trial court’s ruling was an abuse of discretion. The court granted the petition to intervene, which included the complaint and preliminary order

from the civil action. Thus, the court was aware that the intervenor anticipated receiving a substantial judgment against respondent, which could likely be satisfied only from the marital estate.¹ The only witness at the hearing was petitioner, who merely testified about her financial condition and identified the marital assets. The intervenor does not contend that there was additional relevant evidence that she could have presented. “ ‘[T]he key to saving for review an error in the exclusion of evidence is an adequate offer of proof in the trial court.’ ” *Zickuhr v. Ericsson, Inc.*, 2011 IL App (1st) 103430, ¶ 63 (quoting *Snelson v. Kamm*, 204 Ill. 2d 1, 23 (2003)). An offer of proof informs the trial court, opposing counsel, and the reviewing court of the nature of the evidence sought to be introduced. *Id.* Here, the intervenor has not specified any additional relevant evidence that could have been introduced had her attorney been able to participate actively in the proceedings.

¶ 11 The intervenor next contends that the trial court’s distribution of marital property was an abuse of discretion. She argues that the property division was essentially an agreed order, the purpose of which was to strip respondent of any substantial assets from which he could satisfy a judgment against him.

¶ 12 The Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(d) (West 2014)) requires a trial court to divide marital property in “just proportions” after considering 11 enumerated factors. See *In re Marriage of Agazim*, 176 Ill. App. 3d 225, 231 (1988). The trial court in a dissolution action must consider the claims of third parties to assets alleged to be marital. *In re Marriage of Olbrecht*, 232 Ill. App. 3d 358, 365 (1992); see also *In re Marriage of*

¹ The complaint also named as a defendant respondent’s employer, Omnicell, alleging that some of the sexual assaults occurred on its premises. Omnicell has since been dismissed from the proceedings.

Schweih's, 222 Ill. App. 3d 887, 894-95 (1991). The trial court's distribution of marital property will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Kopec*, 106 Ill. App. 3d 1060, 1063-64 (1982).

¶ 13 The trial court did not abuse its discretion. There is simply nothing in the record to support the intervenor's assertion that the parties or the trial court attempted to manipulate the division of marital property to frustrate the intervenor's ability to collect a possible judgment against respondent. Rather, it appears that the property division attempted to provide for petitioner's needs in an appropriate manner under the Act (750 ILCS 5/503(d) (West 2014)).

¶ 14 The only substantial asset petitioner received was the marital home, which the trial court found was worth \$100,000 but (according to petitioner's unrebutted testimony) required substantial repairs. Other than that, she received personal property, including vehicles, and bank accounts. The court found that none of these items had substantial value. The only other marital assets were the marital portions of the parties' retirement accounts. There is no evidence that the parties failed to account for additional assets that could have been used to satisfy a civil judgment.

¶ 15 The intervenor argues that the trial court failed to exercise any discretion in adjudicating her claim given that the dissolution judgment does not specifically mention her claim. We disagree. The dissolution judgment carries forth the prior order prohibiting respondent from transferring or disposing of assets except pursuant to court order. Thus, the court was aware of the claim and accounted for it by prohibiting respondent from transferring any of his assets.

¶ 16 Implicit in the intervenor's contention is that the court should have awarded her a portion of the marital estate to allow her to satisfy the anticipated judgment in the civil case. However, as noted, the record shows that the marital estate was barely sufficient to meet petitioner's needs

going forward. The intervenor cites no authority for the proposition that the court was required to give more weight to her pending claim than to petitioner's needs.

¶ 17 The only case the intervenor cites is a nonprecedential decision from the Third District, *In re Marriage of Saul*, 2014 IL App (3d) 130499-U, which may not be cited as precedent. See Ill. S. Ct. R. 23(e)(1) (eff. July 1, 2011). Petitioner has moved to strike the intervenor's reply brief because it includes argument based on *Saul*. We deny the motion to strike the brief, but we disregard references to *Saul*.

¶ 18 The judgment of the circuit court of Lake County is affirmed.

¶ 19 Affirmed.