2017 IL App (1st) 153518-U
No. 1-15-3518
Order filed February 7, 2017

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN RE THE MARRIAGE OF SRDJAN TRIFKOVIC, Petitioner-Appellant, and MIRJANA TRIFKOVIC, Respondent-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 12 D 008650 The Honorable Carole Kamin Bellows, Judge, presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Pierce and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in holding petitioner in default for failing to appear at court hearings, or in ordering petitioner to contribute to his daughter's college expenses.

¶ 2 Srdjan Trifkovic appeals from the trial court's order dissolving his marriage to Mirjana Trifkovic and ordering him to contribute to the college expenses of their daughter, T.T. Because Srdjan did not provide us with the necessary appellate record to review the trial court's decision, we must affirm the order compelling him to contribute to T.T.'s education. He also argues that the trial court erred in holding him in default after he and his attorney neglected to appear at

several court hearings. Because the trial court did not err in holding Srdjan in default, we affirm. Finally, we hold that the trial court did not abuse its discretion in denying Srdjan a continuance or failing to compel Mirjana to comply with a local rule.

¶ 3 BACKGROUND

¶ 4 On September 10, 2012, Srdjan Trifkovic filed a petition for dissolution of marriage against Mirjana Trifkovic. The Trifkovics had resided in the Chicago area and had an adult daughter, T.T., then attending Columbia College, Chicago. Two months later, Mirjana filed a counterpetition, asking that Srdjan be required to contribute to T.T.'s college expenses.

¶ 5 In February 2014, Mirjana again filed a counterpetition for college expenses. Mirjana asserted that Srdjan had "abandoned responsibility for the family" and moved to Serbia in 2012, and had refused to help pay for T.T.'s college expenses. She also asserted that Srdjan was gainfully employed and able to contribute not less than 50% of those expenses.

¶ 6 On April 10, 2014, the trial court held a hearing on Mirjana's counterpetition. Srdjan was not present in court but was represented by counsel. The trial court's written order states that the court "conducted a pretrial conference and made certain recommendations." The court granted Mirjana's petition without prejudice, ordering Srdjan to pay Mirjana $583.00 per month for T.T.'s college expenses. (Srdjan did not provide us with a transcript of this hearing, so we do not know the details of the discussion of the college expenses.) The trial court also ordered Srdjan to execute and deliver to Mirjana a quitclaim deed for a condo property they had owned so that Mirjana could obtain a loan modification of that property.

¶ 7 On May 5, 2014, the trial court issued an order stating that Srdjan had failed to appear and failed to tender the quitclaim deed to Mirjana. The order also stated that Srdjan's failure to appear at the next court date might subject him to a default order. (Again, we have no transcript

of the proceedings on this court date, but Mirjana's counsel later asserted that she mailed and emailed a copy of this order to Srdjan's counsel. In his brief, Srdjan acknowledges that his counsel was not present at this hearing.)

¶ 8 Next, on May 27, the trial court issued an order stating that Srdjan had again failed to appear and had not complied with the April 10 and May 5 orders, and that "failure to appear at the next court date shall subject him to entry of default order." (Again, we have no transcript of the proceedings, but Mirjana's counsel later asserted that she mailed and emailed a copy of this order to Srdjan's counsel. In his brief, Srdjan acknowledges that his counsel was not present at this hearing.)

¶ 9 On June 17, 2014, the court issued an order stating that, as Srdjan had not appeared on May 27 or June 17, and had not complied with the April 10 and May 5 orders, he was found in default and the matter would proceed on Mirjana's counterpetition for dissolution. The order also set the next court date for setting a "prove-up date for entry of default judgment." (Again, we have no transcript, but Mirjana's counsel later asserted she mailed a copy of this order to Srdjan's counsel. In his brief, Srdjan acknowledges that his counsel was not present at this hearing.)

¶ 10 On August 1, 2014, Srdjan moved to vacate the default, stating that his counsel had missed court dates due to "computer calendar program malfunctioning." On August 8, 2014, the trial court reset the case for September 4, warning that "if the motion [to vacate default] is denied, the court shall immediately send the case out for immediate prove-up of default judgment." On September 10, the court again rescheduled the hearing on the motion to vacate default to September 23, and again warned that if the motion was denied, the case would be set for immediate prove-up on the default judgment on the same date.

¶ 11 On September 23, 2014, the trial court denied the motion to vacate with prejudice. (We have no transcript of the hearing on that motion.) The written order states that the case shall be sent out for immediate prove-up on default judgment.

¶ 12 The prove-up hearing began that afternoon. Srdjan's counsel argued that, though his client was in default, counsel was still entitled to participate in the hearing. Counsel stated that he was not prepared to proceed with the prove-up hearing and asked the court to postpone the hearing for three weeks so that counsel could serve various subpoenas. Counsel also protested that Mirjana had not yet complied with Local Rule 13.3.2 by failing to submit certain financial statements. Noting that it had issued a series of orders warning Srdjan that the case would be sent for immediate prove-up, the court denied counsel's request for a continuance; however, the court allowed counsel to participate in the prove-up hearing.

¶ 13 At the hearing, Mirjana testified that T.T. was then a junior in college, set to graduate in June 2016, and that her total yearly tuition was $24,000. Though Srdjan had been ordered to contribute $583 per month, he had not made these contributions. The trial court entered an order of dissolution and adopted the previous order as to college contributions that Srdjan must pay $583 per month (which the court noted was less than a third of T.T.'s yearly tuition bill).

¶ 14 ANALYSIS

¶ 15 As a preliminary matter, although Mirjana did not file a brief responding to Srdjan's arguments, we may decide this appeal on its merits as the record and claimed errors are straightforward and can be determined without the aid of an appellee's brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 16 Srdjan's Contribution to T.T.'s College Expenses

¶ 17 Srdjan first argues that the trial court failed to consider the statutory factors before ordering him to contribute to T.T.'s college expenses. In ordering a party to contribute to a child's educational expenses, the trial court must consider "all relevant factors," including the parents' financial resources; the child's standard of living during the marriage; the child's financial resources; and the child's academic performance. 750 ILCS 5/513(j) (West 2014).

¶ 18 The trial court's determination that Srdjan should pay $583 per month was initially made at the April 10, 2014 hearing, in the presence of both counsels and after a pretrial conference. But we do not know what took place at that conference or what information relevant to the 513(j) factors was presented or considered by the trial court. Srdjan, as appellant, did not provide us with a transcript of that hearing.

¶ 19 "The law is well settled that appellants bear the duty to present a record which fairly and fully presents all matters necessary and material for a decision of the question raised." (internal quotations omitted) *Emery v. Northeast Illinois Regional Transportation Co.*, 374 Ill. App. 3d 974, 979 (2007); see also Ill. S. Ct. R. 321 (eff. July 30, 1979) (record on appeal shall include reports of proceedings prepared); Ill. S. Ct. R. 323(a) (eff. Jan. 1, 1970) (report of proceedings shall include "all the evidence pertinent to the issues on appeal"). In the absence of a report of proceedings, any doubts will be resolved against the appellants and we presume that the trial court's orders conform with the law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 20 Thus, we presume that at the April 10 hearing, the trial court did consider the 513(j) factors, and we must reject Srdjan's claim on that basis. See *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241-43 (2007) (where respondent failed to provide transcript of hearing at which he

was required to contribute to child's college expenses, appellate court must assume that trial court properly considered section 513 factors at hearing).

¶ 21 This also undercuts Srdjan's arguments that the trial court refused to allow him to cross-examine Mirjana or introduce evidence on this point during the September 2014 prove-up hearing. Again, we must assume that the trial court already had all the information needed to make the $583 calculation at the earlier April 10 hearing. The prove-up hearing, after Srdjan had been found in default, was simply too late for Srdjan to begin contesting these factual issues.

¶ 22 Default Judgment

¶ 23 Next, Srdjan argues that the trial court erred in entering a default judgment against him, and should have vacated the default. Default judgments are a "drastic remedy," generally disfavored by courts, and should only be used as a last resort. *In re Haley D.*, 2011 IL 110886, ¶ 69. The law prefers that issues be determined according to the parties' substantive rights. *Id.*

¶ 24 "The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." 735 ILCS 5/2-1301(e) (West 2014). Under 2-1301, the "overriding consideration" is whether "substantial justice" is being done, and whether it is reasonable under the circumstances to compel the other party to go to trial on the merits. *Haley D.*, 2011 IL 110886, ¶ 57. Courts determining whether substantial justice has been achieved should look to the diligence (or lack of diligence), the existence of a meritorious defense, the severity of the penalty resulting from the judgment, and the relative hardships on the parties. (internal quotations omitted) *In re Marriage of Harnack and Fanady*, 2014 IL App (1st) 121424, ¶ 45.

¶ 25 Having examined the record before us, we cannot say that the trial court erred in entering default judgment against Srdjan or in rejecting his motion to vacate the default judgment. Srdjan was out of the country throughout most of the litigation, but he was represented by counsel. And, counsel participated in the pretrial conference regarding T.T.'s college contributions (the only substantive issue raised in this appeal). Counsel then failed to appear or respond to court orders for several weeks. The trial court issued two written orders warning that Srdjan would be found in default, and the record shows that these orders were sent to Srdjan's counsel.

¶ 26 Even after Srdjan was found in default on June 17, it was not until July 30 (almost six weeks later) that Srdjan's counsel reappeared and supplied any explanation for his absence ("computer calendar program malfunctioning"). This is insufficient reason to relieve Srdjan of the default. A litigant is generally bound by the mistakes or negligence of its counsel. *R. M. Lucas Co. v. Peoples Gas Light & Coke Co.*, 2011 IL App (1st) 102955, ¶ 18. Further, Srdjan had delayed paying his college contributions that had already been imposed in the April 10 hearing. This history shows a lack of diligence on the part of both Srdjan and his counsel.

¶ 27 Moreover, after the prove-up hearing, neither party was granted spousal support; each kept the property in their possession; and they would share financial responsibility for their real properties. Each would pay their own attorneys' fees. Srdjan's ordered contribution to T.T.'s college expenses — $583 per month — was much less than half of her total tuition, and was the same amount ordered in the April 10 hearing (where his counsel was present). Not being able to contest Mirjana in the prove-up hearing did not prejudice Srdjan.

¶ 28 Finally, vacating the default judgment would have negatively affected T.T.'s education. See *In re Marriage of Ward*, 282 Ill. App. 3d 423, 433 (1996) (respondent not denied substantial justice where trial court denied motion to vacate default judgment to prevent further delays and

expense). Considering the entire record, as we must, we find that the trial court, who showed great patience toward Srdjan and his counsel, correctly held him in default and correctly denied his motion to vacate the default.

¶ 29 Continuance at Prove-Up Hearing

¶ 30 Srdjan next argues that the trial court erred in denying him a three-week continuance in the prove-up hearing so that his counsel could issue subpoenas. Such a question of courtroom management squarely rests with the trial court's discretion. *Williams v. Covenant Medical Center*, 316 Ill. App. 3d 682, 692 (2000). No litigant has an absolute right to a continuance, and the decisive factor is whether that litigant has exercised due diligence in proceeding with the case. *Somers v. Quinn*, 373 Ill. App. 3d 87, 96 (2007).

¶ 31 Srdjan was in default because neither he nor his counsel appeared at several consecutive court hearings, even after being repeatedly warned in writing that default would be the consequence for absence. This does not show due diligence. Further, the trial court's written orders stated that a prove-up hearing would follow "immediately" after a denial of Srdjan's motion to vacate the default order. Srdjan's counsel was on notice, for over a month, that the prove-up hearing would occur. Again, it was not diligent to appear at the prove-up hearing and then ask for more time to prepare. We reject the claim that the trial court abused its discretion.

¶ 32 Violation of Local Rules

¶ 33 Finally, Srdjan argues that the trial court erred in refusing to force Mirjana to comply with a local rule requiring disclosure of financial documents. Supreme Court Rule 21(a) allows circuit courts to adopt local rules, and those rules are meant to be followed. *VC&M, Ltd. v. Andrews*, 2013 IL 114445, ¶¶ 15, 26. But it is a matter of trial court discretion whether to impose sanctions for violating local rules, based on the trial court's inherent power to control its

docket. *Id.* ¶ 26. Given that Srdjan and his counsel ignored several trial court orders, failed to appear when ordered, and were held in default, we cannot say that the trial court abused its discretion in not forcing Mirjana to comply with a local rule. *Id.* ¶ 27. That the case did not end in Srdjan's favor was not due to any such violation by Mirjana.

¶ 34 Affirmed.