

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
FIRST DISTRICT

<i>In re</i> MARRIAGE OF CHARLOTTE COVELLO,)	Appeal from the Circuit Court of Cook County.
)	
Petitioner-Appellant,)	
)	No. 10 D 10105
and)	
)	
NICHOLAS COVELLO,)	The Honorable
)	David E. Haracz,
Respondent-Appellee.)	Judge, presiding.

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

ORDER

¶ 1 *Held:* Trial court order dividing parties' marital estate and setting respondent's child support obligation was not an abuse of discretion and is affirmed.

¶ 2 After a 10-year marriage, Charlotte and Nicholas Covello were divorced in December 2013 in a bifurcated proceeding. During the distribution of assets portion of the trial, Charlotte claimed Nicholas dissipated marital assets by failing to account for the proceeds of a 2007 loan and rent he received from leasing the marital home. The trial court dismissed the dissipation

claim finding the marriage was not undergoing an irretrievable breakdown in 2007 and that Nicholas used the rent to maintain and manage the parties' other properties. The court divided the parties' other marital assets and ordered Nicholas to pay \$1,076.94 per month in child support based on his monthly net income from his pension. Charlotte appealed arguing the trial court erred in: (i) determining the date of irretrievable breakdown of the marriage for purposes of her dissipation of marital assets claim; (ii) dismissing her dissipation claim where Nicholas failed to account for the proceeds of the loan and rent on the marital home; (iii) failing to consider that portion of Nicholas's pension earned during the marriage as a marital asset; and (iv) failing to consider Nicholas's income from real estate investments in determining his child support obligation.

¶ 3 We affirmed the trial court's dismissal of Charlotte's dissipation claim and remanded for further explanation on the pension and child support issues. *In re Marriage of Covello*, 2016 IL App (1st) 150683-U (unpublished order under Supreme Court Rule 23). On remand, the trial court entered an order stating that after considering all relevant factors, including that each party netted about the same income, it determined it would not be equitable to award Charlotte a share of the marital portion of Nicholas's pension. The court further stated that Nicholas's rental property income was not included in calculating his child support obligation because he netted no proceeds from the property. Because neither determination was an abuse of discretion, we affirm.

¶ 4 **BACKGROUND**

¶ 5 Charlotte and Nicholas were married in 1999, and have two minor children. Charlotte, a podiatrist, has an income of about \$80,000 a year. Nicholas receives a gross pension income of \$6,057.98 per month from his 30-year employment with the City of Chicago. During the

marriage, the parties acquired several parcels of real estate, including the marital home at 19 E. Goethe Street, Chicago, which has been in foreclosure proceedings. Most of the other real estate consists of vacant lots, which are either in foreclosure, delinquent on taxes, or have pending fines for City of Chicago code violations. Nicholas rents out 19 E. Goethe for about \$4,000 monthly. Before the marriage, Nicholas purchased a commercial building at 65-71 W. Chicago Avenue, which he leases to Chase Bank. The parties agree this is non-marital property.

¶ 6 Charlotte filed for dissolution of marriage in November 2005, but that petition was dismissed in March 2007 for want of prosecution. The parties separated on August 25, 2010, and Charlotte filed a second dissolution petition on October 15, 2010. In a bifurcated trial, the court entered a judgment of dissolution of marriage on December 12, 2013, granting Charlotte sole custody of the minor children with visitation rights to Nicholas.

¶ 7 During the division of assets portion of the trial, Nicholas testified he uses the rent from 19 E. Goethe to pay expenses on the parties' other properties. Charlotte acknowledged that aside from the house at 19 E. Goethe, she was not involved in the maintenance and upkeep of the parties' properties.

¶ 8 James Perry testified that Lamar Advertising has a 15-year lease to rent space on the rooftop of Nicholas's building at 65-71 W. Chicago Avenue. Perry said and that rather than paying rent on a monthly basis, Lamar paid Nicholas a \$256,000 lump sum in 2007.

¶ 9 Fernando Rivera, Nicholas's bookkeeper, testified that Nicholas receives about \$17,900 per month in rent on the Chicago Avenue property and has a mortgage payment of about \$15,000 per month. Rivera said Nicholas uses the \$4,000 rental income on 19 E. Goethe for maintenance on that building and expenses on the parties' other properties, which he usually pays for in cash.

¶ 10 On February 3, 2015, the trial court entered a judgment on the division of marital property. The court dismissed Charlotte's dissipation claim, finding that the marriage was not undergoing an irretrievable breakdown when she claimed the dissipation occurred and because Nicholas had not dissipated marital assets. The court awarded Nicholas the property at 65-71 Chicago Avenue, and several other properties, along with the debts associated them. The court awarded Charlotte all interest in her podiatry practice. The court denied any claim for maintenance by either party, divided any potential settlement arising out of Nicholas's pending worker's compensation claim against the City of Chicago, ordered the parties to sell their timeshare in Mexico and divide the proceeds, awarded each party all personal property in their possession, allocated the debts, and ordered the parties to pay their own attorney fees and costs. The court also ordered Nicholas to pay \$1,076.94 per month in child support based on his \$3,846.21 net income from his pension.

¶ 11 We affirmed the trial court's dismissal of Charlotte's dissipation claim, but remanded for further clarification on its decision to not award Charlotte any portion of Nicholas's pension earned during the marriage and to not include Nicholas's rental income in calculating his child support obligation. *In re Marriage of Covello*, 2016 IL App (1st) 150683-U (unpublished order under Supreme Court Rule 23). On remand, the trial court held that: (i) after considering all relevant factors, including that each party was netting about the same income, it would not be equitable to award Charlotte a share of the marital portion of Nicholas's pension; and (ii) Nicholas's rental property income was not included when calculating his child support obligation because net proceeds from the property was zero.

¶ 12

ANALYSIS

¶ 13 As a preliminary matter, we note that Charlotte’s brief does not comply with Illinois Supreme Court Rule 341(c), requiring a signed certification that the brief complies with the requirements of Rule 341(a) and (b) and the page requirements in Rule 341(d). Although the certification language is present, it is not signed by Charlotte’s attorney. It is within our discretion to strike a brief and dismiss an appeal for failure to comply with the rules. *Parkway Bank & Trust Co. v. Korzen*, 2013 IL App (1st) 130380, ¶ 10. Because the brief is adequate in most respects and the deficiencies do not hinder our ability to review the issues, we will not strike it. See *Spangenberg v. Verner*, 321 Ill. App. 3d 429, 432 (2001) (declining to strike brief where it complied with rules in other ways and none of violations were so flagrant as to hinder or preclude review). We also note that Nicholas did not file an appearance or brief in this appeal and we notified the parties that we would proceed on Charlotte’s brief alone.

¶ 14 Pension

¶ 15 Charlotte contends the trial court erred in failing to allocate that part of Nicholas’s pension earned during the marriage as a marital asset.

¶ 16 A trial court’s distribution of marital assets will not be disturbed on appeal unless the trial court clearly abused its discretion in making that distribution. *In re Marriage of Hall*, 278 Ill. App. 3d 782, 785 (1996). The question is not whether we agree with the trial court, but rather whether no reasonable person would take the view adopted by the trial court. *Id.* An abuse of discretion occurs only when no reasonable person would take the view adopted by the court. *Id.*

¶ 17 Section 503(b)(2) of the Illinois Marriage and Dissolution of Marriage Act provides, in part, that “all pension benefits (including pension benefits under the Illinois Pension Code, defined benefit plans, defined contribution plans and accounts, individual retirement accounts, and non-qualified plans) acquired by or participated in by either spouse after the marriage and

before a judgment of dissolution of marriage or legal separation or declaration of invalidity of the marriage are presumed to be marital property.” 750 ILCS 5/503(b)(2) (West 2016).

¶ 18 Charlotte contends the trial court erred in failing to consider Nicholas’s pension as a marital asset. The trial court acknowledged the pension was part of the marital estate but determined, after considering all relevant factors, including that at the time of trial, the parties were netting about the same amount of income, it would not be equitable to award Charlotte any of the marital portion of Nicholas’s pension. This finding was not an abuse of discretion and is affirmed.

¶ 19 **Child Support Obligation**

¶ 20 Next, Charlotte contends that under section 505(a)(3) of the Act (750 ILCS 5/504(a)(3) (West 2016), the court was obligated to consider Nicholas’s net income, which includes income from all sources, and thus, the court should have considered Nicholas’s income from real estate, including the rental income from the Chicago Avenue property and 19 E. Goethe and the \$256,000 he received for leasing a billboard on the Chicago Avenue building.

¶ 21 A court may order a supporting parent to pay child support in an amount that is reasonable and necessary for the support of the children. 750 ILCS 5/505(a) (West 2016). Generally, the minimum amount of child support that can be awarded for two children is 28% of the supporting parent’s net income. 750 ILCS 5/505(a)(1) (West 2016). Section 505 of the Act defines net income for purposes of child support as the total of all income from all sources minus the following deductions: (a) Federal income tax; (b) State income tax; (c) social security tax; (d) mandatory retirement contributions; (e) union dues; (f) dependent and individual health insurance premiums; (g) prior obligations of support paid under court order; and (h) expenditures for the repayment of debts that represent reasonable and necessary expenses for the production of

income; (i) foster care payments. *Id.* The findings of a trial court as to net income and the award of child support are within its sound discretion and will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Deem*, 328 Ill.App.3d 453, 457 (2002).

¶ 22 On remand, the court stated that in calculating Nicholas's child support obligation, it did not include income from the rental properties because it found that the net proceeds from those properties, after deducting taxes, insurance, mortgage payments, and the costs of upkeep was zero. The court was permitted under section 505(a)(1) of the Act to consider those deductions in calculating Nicholas's income from the rental properties. The court also determined that because the lump sum payment of \$265,000 for leasing a billboard on the Chicago Avenue building was received in 2007, before the breakdown of the marriage, and was spent long before trial, it would not be considered in calculating Nicholas's child support obligation. Neither finding was an abuse of discretion. Thus, the trial court properly calculated Nicholas's child support obligation based on 28% of his monthly pension.

¶ 23 Affirmed.