

¶ 3

BACKGROUND

¶ 4 After twenty-four years of marriage, Duncan filed a petition for dissolution of marriage in May 2012. The marital property listed in the petition included a townhouse located in the 900 block of White Oak Lane in University Park, Illinois (Property), which was allegedly valued at approximately \$97,500. Karen responded, in part, that similar townhouses in the area had recently sold for \$65,000. She also stated that she and Duncan had unsuccessfully attempted to refinance the Property in March 2012.

¶ 5 On March 24, 2014, the circuit court entered a judgment for dissolution of marriage (dissolution order) which incorporated a settlement agreement between Duncan and Karen. According to the settlement agreement, the Property had an estimated value of approximately \$80,000, and the unpaid mortgage balance was approximately \$40,000. Duncan agreed to deliver a quitclaim deed to Karen, and she agreed to refinance or modify the mortgage on the Property to remove his name from the title. The settlement agreement provided that Karen would compensate Duncan with one-half of the equity as of the date of a valuation of the Property by a disinterested appraiser mutually selected by the parties.

¶ 6 The settlement agreement further provided that if Karen was unable to refinance or modify the mortgage within one year of the dissolution order, the Property would be placed on the market for sale at a price comparable to the appraised value. After an adjustment for closing costs, taxes, and other fees, the sale proceeds would be divided equally between the parties.

¶ 7 In 2016, Duncan filed a petition to enforce the dissolution order pursuant to section 511 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/511 (West 2012)); he subsequently amended the petition. Duncan asserted that Karen as required under the settlement agreement had failed to refinance or modify the mortgage on the Property. He sought an order

directing her to immediately place the Property for sale and pay him 50% of the proceeds.

¶ 8 Karen responded that she had attempted to refinance the Property in March 2015, but the application was denied by Credit Union 1 because the outstanding balance on the existing mortgage loan exceeded the value of the Property. She also alleged that Duncan had failed to comply with their settlement agreement based on his inaction with respect to a lawsuit filed against her by Wells Fargo, which had resulted in a \$13,000 judgment. According to Karen, the credit card debt to Wells Fargo was a joint debt for which Duncan was partially responsible pursuant to the settlement agreement. Karen further represented that she had applied to Bank of America for a modification of the existing loan on the Property in May 2016, but was denied due to the unsatisfied Wells Fargo judgment.

¶ 9 Duncan replied that he had reduced the debt to Wells Fargo to \$200 at the time he vacated the Property in January 2012. He alleged that Karen fraudulently concealed that she had increased the debt. In addition to the immediate sale of the Property and division of the proceeds, Duncan sought an order directing Karen to “pay for the Wells Fargo debt as her personal debt out of the proceeds of sale.”

¶ 10 After directing both parties to submit appraisals of the Property, the circuit court entered an order on February 2, 2017, denying Duncan’s amended petition to enforce the dissolution order. The circuit court expressly found: (i) Karen’s inability to refinance the loan on the Property resulted from an “impossibility” beyond her control; (ii) the outstanding balance on the loan on the Property was approximately \$31,000 as of December 21, 2016; (iii) the debt underlying the Wells Fargo judgment of approximately \$12,000¹ against Karen was marital in nature; (iv) the parties agreed that the updated appraisal value of the Property was \$43,000;

¹ Although Karen had previously represented that the Wells Fargo judgment exceed \$13,000, the challenged order references a judgment of \$12,000.

(v) the equity in the Property was thus \$12,000 as of December 21, 2016; and (vi) it was “inappropriate under the circumstances” to order Karen to use \$118,000 she had received from Duncan’s 401(k) retirement account (pursuant to the settlement agreement) to satisfy the marital debt to Wells Fargo. Duncan filed a timely appeal.

¶ 11

ANALYSIS

¶ 12 As a preliminary matter, we observe that the statement of facts in Duncan’s appellate brief fails to consistently include references to the pages of the record on appeal, in violation of Illinois Supreme Court Rule 341(h)(6) (eff. Jan. 1, 2016). We further note that his brief does not set forth a concise statement of the applicable standard of review, as required by Rule 341(h)(3). Ill. S. Ct. R. 341(h)(3). The foregoing deficiencies, however, do not impair our effective review of this case. *E.g., Carter v. Carter*, 2012 IL App (1st) 110855, ¶ 12. We thus turn to the merits, *i.e.*, Duncan’s contention that the circuit court erred in denying his petition to enforce the dissolution order.

¶ 13 Duncan accurately observes that the settlement agreement reflects a negotiated agreement between him and Karen. *In re Marriage of Razzano*, 2012 IL App (3d) 110608, ¶ 13. See also 750 ILCS 5/502 (West 2012). An alteration of one of the terms of the agreement could impact the entire agreement. *Razzano*, 2012 IL App (3d) 110608, ¶ 16. “The provisions of marital settlement agreements and of dissolution judgments which incorporate such agreements are interpreted under the same rules governing the construction of contracts.” *In re Marriage of Druss*, 226 Ill. App. 3d 470, 475 (1992). A court’s primary objective is to give effect to the intent of the parties, which must be determined based on the language of the agreement, absent an ambiguity. *Razzano*, 2012 IL App (3d) 110608, ¶ 13. See also *Blum v. Koster*, 235 Ill. 2d 21, 33 (2009) (stating that “the court must ascertain the parties’ intent from the language of the

agreement”). We review the interpretation of a marital settlement agreement *de novo*. *Id.*

¶ 14 Both parties advance arguments regarding the terms of the settlement agreement.

Duncan notes that Karen received other property from him pursuant to their agreement, including a luxury vehicle, half of his retirement and 401(k) accounts, and a \$700 monthly payment for two years. He contends that the provisions of the agreement addressing the disposition of the Property cannot be set aside merely because Karen possibly had “second thoughts” concerning her obligations thereunder. See, e.g., *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 214 (1994). Karen observes that the settlement agreement described the responsibilities of the parties “[i]n the event the parties have *no other option* than to commence sale” of the Property.

(Emphasis added.) She asserts that the parties’ intent was clear, *i.e.*, Duncan was to receive his equity interest through a refinancing or – in the event there was “no other option” – through the sale of the Property.

¶ 15 The circuit court’s ruling, however, is not based on an *interpretation* of the settlement agreement. Distilling down their arguments, Duncan and Karen do not appear to disagree regarding the basic obligations with respect to the Property which were memorialized in their agreement, *i.e.*, refinance or sell the Property and split the equity. Rather, the circuit court’s ruling addressed the *enforcement* of the agreement, and was rooted in three key findings, described below. “[T]he standard of review is whether the trial court’s findings of fact are against the manifest weight of the evidence.” *In re Marriage of Charles*, 284 Ill. App. 3d 339, 342 (1996). “A decision is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent or when the court’s findings appear to be unreasonable, arbitrary, or not based on the evidence.” *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 44.

¶ 16 The first finding of the circuit court was that Karen’s inability to refinance the loan on the

Property resulted from an “impossibility” beyond her control. Duncan asserts that Karen produced no documentation to substantiate her claim that she was unable to secure refinancing or a loan modification. The order denying his petition, however, expressly stated that the circuit court had heard testimony from the parties and the arguments of counsel and had considered Karen’s representations that her inability to refinance resulted from the Wells Fargo judgment. Based on the foregoing, the circuit court had adequate evidence at its disposal and was able to observe the parties in making its determinations. See *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006). We further note that the record on appeal does not include a transcript or other report of proceedings regarding the hearings on Duncan’s petition. See Ill. S. Ct. R. 323 (Dec. 13, 2005). Any deficiencies or doubts arising from an insufficient record will be construed against Duncan, as the appellant. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 15.

¶ 17 The second finding was that the equity in the Property was approximately \$12,000, based on the outstanding mortgage balance of approximately \$31,000. Although Duncan suggests that the value of the Property “continues to be in dispute,” the circuit court order provided that the parties had agreed that the updated appraisal value was \$43,000. In the instant case, sufficient evidence regarding the value of the Property was presented to the circuit court. *Id.*, ¶ 29 (noting that the valuation of assets is generally a question of fact, and the circuit court’s determination will not be disturbed absent an abuse of discretion).

¶ 18 The third finding was that the \$12,000 judgment in favor of Wells Fargo was “marital” in nature. In making that finding, the circuit court expressly considered the dates of the dissolution order and the Wells Fargo judgment against Karen, as well as the purchases underlying the judgment. Duncan asserts that the credit card balance owed to Wells Fargo was only \$200 when he vacated the Property. Debts incurred after the parties’ separation, however, may be

considered marital property and “it is within the trial court’s discretion to order that the other party or both parties be held responsible for paying them.” *Id.*, ¶ 23.

¶ 19 Based on the foregoing findings, the circuit court effectively determined that Duncan was entitled to a recovery on his Property-based claim and that Karen was entitled to a recovery on her Wells Fargo-based claim. As such claims were in similar amounts, the circuit court apparently offset the obligations and denied Duncan’s petition to enforce the dissolution order. By effectuating a proverbial “wash,” the circuit court conserved limited judicial resources. See, e.g., *Crawford County Oil, LLC v. Weger*, 2014 IL App (5th) 130382, ¶ 19 (referencing “the interests of judicial economy”); *In re Marriage of Bennett*, 225 Ill. App. 3d 828, 833 (1992). As noted by courts in other contexts, the circuit court was not required to abandon common sense in rendering its decision. See, e.g., *Nelson v. Artley*, 2015 IL 118058, ¶ 29; *Flexible Staffing Services v. Illinois Workers’ Compensation Comm’n*, 2016 IL App (1st) 151300WC, ¶ 27. Under the circumstances of this case, we conclude that the circuit court did not err in denying the relief requested by Duncan.

¶ 20 CONCLUSION

¶ 21 We affirm the judgment of the circuit court of Cook County denying Duncan’s amended petition to enforce the judgment for dissolution of marriage.

¶ 22 Affirmed.