

NOTICE
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2017 IL App (5th) 160227-U

NO. 5-16-0227

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
ANNE JONES,)	Madison County.
)	
Petitioner-Appellee,)	
)	
and)	No. 08-D-1041
)	
DAVID JONES,)	Honorable
)	Martin J. Mengarelli,
Respondent-Appellant.)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order is reversed and remanded where it ordered compensatory damages to an aggrieved party under a finding of indirect civil contempt; vacated and remanded where the indirect civil contempt finding was an improper remedy; and affirmed where it ordered payment of attorney fees.

¶ 2 BACKGROUND

¶ 3 This appeal arises from the circuit court's order finding the appellant, David Jones, in indirect civil contempt of court and ordering him to pay compensatory damages to the appellee, Anne Jones. The parties married on March 6, 1996, and had two children, one

born in 1995 and one born in 1998. During the parties' marriage, they purchased a marital home in Alton, Illinois, and a rental property, a two-unit duplex, in Granite City, Illinois. On October 21, 2008, Anne filed a petition for dissolution of marriage.

¶ 4 On February 13, 2009, the circuit court entered a temporary order that required David to pay all regular household bills, as well as list the marital home for sale. The court determined that David was responsible for these tasks because he was the primary wage earner and had handled the parties' finances during their marriage.

¶ 5 On August 5, 2009, Fifth Third Mortgage Company filed suit to foreclose on the marital home. The complaint alleged that no mortgage payments, mortgage insurance, or real estate taxes had been paid since April 1, 2009. David was personally served on August 8, 2009, and also accepted substitute service for Anne.

¶ 6 In August 2009, the circuit court held a five-day trial on the parties' dissolution of marriage, which included the custody determination of the parties' two children, as well as the distribution of real and personal property. During trial, Anne testified that the marital home had been listed for sale at \$279,000 in April 2009. Anne believed that the marital home would sell at the listed price, and that to her knowledge, David had made all mortgage payments and paid all regular household bills. Anne testified that the marital home had two outstanding mortgages, totaling \$170,000, and that the parties agreed the home had \$100,000 in equity.

¶ 7 David testified that he primarily handled the parties' finances, paying all bills and mortgages on the marital home and two-unit duplex, which served as rental income. David testified that the two-unit duplex produced rental income of \$575 per unit per

month. However, he testified that after January 2009 he was unable to make mortgage payments on the two-unit duplex. As a result, a foreclosure suit was filed on June 23, 2009. Anne testified that she was aware of the two-unit duplex foreclosure. However, neither David nor Anne testified to the foreclosure proceedings on the marital home at trial.

¶ 8 On September 24, 2009, judgment for foreclosure and sale of the marital home was entered for \$153,968.29 in the suit brought by Fifth Third Mortgage Company. On March 25, 2010, the report of sale and the order of possession of the marital home were entered for \$162,315.18. No equity remained in the marital home following the foreclosure sale.

¶ 9 In a lengthy, 28-page judgment of dissolution of marriage order, entered on April 5, 2010, Judge Levy instructed the parties to sell the marital home, divide the net proceeds, and awarded Anne sole custody of the minor children. The circuit court's order is not clear as to whether Judge Levy ordered a 60/40 division, or an even split of the net proceeds of the marital home, given that both options, as indicated below, were referenced in separate paragraphs. In the court's order, Judge Levy instructed the sale of the marital home and stated the following:

"[p]ending the sale of the said marital residence, David shall pay 75% and Anne shall pay 25% of the mortgage payment and any utilities and expenses related to said property beginning with the May 1, 2010 payment. David shall have paid 100% of the mortgage payment through and including April, 2010, along with the utilities and other expenses related to said property incurred at the residence

through and including April 30, 2010. *** Upon the sale of the property, David is awarded forty percent (40%) of the net proceeds and Anne is awarded sixty percent (60%) of the net proceeds."

However, Judge Levy wrote the following in the next paragraph:

"Upon the sale of the property, the parties shall divide equally the net proceeds after the customary costs of sale are paid ***."

The order specifically made reference to the court's knowledge of the foreclosure on the two-unit duplex. However, the order did not discuss the marital home foreclosure proceedings. As such, it appears the court was unaware of the foreclosure proceedings on the marital home at the time it entered the judgment.

¶ 10 On May 4, 2010, Anne filed both a motion to amend the judgment of dissolution of marriage and a petition for adjudication of indirect civil contempt. Anne alleged that the marital home had been foreclosed, unbeknownst to her until April 2010, as a result of David's failure to pay the debts associated with the marital home. Anne requested that the circuit court find David in indirect civil contempt and award her maintenance for the lost equity in the marital home that resulted from the foreclosure. This was the first written notation to the circuit court regarding the foreclosure of the marital home. Anne further alleged that David had failed to sell all farm equipment and vehicles, which included items in his possession, as well as items he had moved to other properties owned by a family friend, Joe Oros, and his parents. Moreover, Anne alleged that David had sold some equipment but failed to split the proceeds with her.

¶ 11 David filed a motion to reconsider the judgment of dissolution of marriage on May 5, 2010. David argued that the circuit court failed to take into consideration Anne's irresponsible spending and her refusal to work when it ordered David to pay all mortgage payments on the marital home, even though he was unemployed and the marital home had gone into foreclosure. David also argued that the court's order was inequitable where it instructed an even split of the proceeds from the sale of the farm equipment and vehicles, given that Anne was awarded a much larger portion of the value of the marital home. In particular, David argued the following:

"7. The Court improperly awarded Anne 60% of the net proceeds from the sale of the home for at least two reasons: 1) David had no income at the time of the trial and there was no evidence presented that he would have any certain income in the future; 2) Anne's contributions to the marital estate were nominal due to her refusal to obtain gainful employment.

8. The Court's ruling that David shall have paid 100% of the mortgage payment through April, 201[0], is contrary to the evidence at trial that David had been laid off and had no income other than random sales of sawdust, and that the home had gone into foreclosure as a result."

With regard to the custody of the children, David argued that the court's consideration of the relevant best interest factors was contrary to the evidence. David also argued that the court's assessment of child support was against the manifest weight of the evidence.

¶ 12 On August 10, 2010, David filed a motion to reopen evidence or to modify the judgment of dissolution of marriage and for an *in camera* interview of the minor children.

On that same day the circuit court held a hearing on David's May 5, 2010, motion to reconsider the judgment of dissolution of marriage. David requested modification of the judgment, given his lack of employment and his inability to comply with the court's order to pay the mortgage payments on the foreclosed marital home. David also requested permanent custody of the parties' children. The court instructed David's counsel to provide all copies of David's paystubs for a determination of child support. Additionally, Anne's counsel referenced the foreclosure of the marital home before the court:

"The house was lost. So any disparity in distribution is moot. What he was supposed to pay he did not pay, and the house was foreclosed on. So there is no — it doesn't matter that my client got 60 percent of nothing because he didn't pay the mortgage. But that is an argument for the contempt citation that is pending."

¶ 13 On September 29, 2010, Judge Levy denied David's motion to reconsider the judgment of dissolution of marriage. First, the circuit court denied David's request to reconsider its award of custody to Anne and its child support determination. Next, with regard to financial issues, the court renewed the February 13, 2009, temporary order, which required David to pay all regular household bills. Additionally, Judge Levy amended the April 5, 2010, judgment of dissolution of marriage order to include:

"Further, the 60/40 division of the net proceeds is further justified in that David paid back two alleged loans, one to his brother and another to a friend. He paid his friend \$4,700 from the settlement money but could not remember when he paid his brother \$7,500. ***

*** [T]he Court amends its Judgment of Dissolution of Marriage by omitting the first part of the first sentence on page 22 of the Judgment. Beginning at the bottom of page 21 and continuing onto page 22, the sentence should now read as follows: *Upon the sale of the property*, David is awarded forty percent (40%) of the net proceeds and Anne is awarded sixty percent (60%) of the net proceeds, except that any liens placed upon the property by either of the parties' attorneys for attorney's fees and costs due and owed by the party to his/her attorney or for any liabilities assigned to any party pursuant to this Judgment of Dissolution of Marriage shall come out of that party's share of the net proceeds and not from the gross proceeds amount." (Emphasis added.)

Judge Levy omitted the sentence that evenly divided the net proceeds, clarifying that Anne was to receive 60% and David was to receive 40% of the net proceeds from the sale of the marital home. It appears Judge Levy was unaware or overlooked the foreclosure of the marital home, even though Anne's May 4, 2010, motion to amend the judgment of dissolution of marriage acknowledged the foreclosure; David's May 5, 2010, motion to reconsider also stated that fact; and Anne's counsel referenced the foreclosure of the marital home at the August 10, 2010, hearing. Neither party appealed this judgment.

¶ 14 On January 5, 2011, David filed a motion to reserve child support or deviate from statutory guidelines. David requested permanent custody of the children and for termination of his child support obligations.

¶ 15 On March 25, 2011, Judge Levy entered a handwritten order, which stated that "[t]he parties agree that the court shall take judicial notice of Case No 09-CH-586 and

Case No 09-CH-730 filed in Madison County, Il." The cited case numbers reflect the foreclosure actions on the marital home and two-unit duplex, respectively. This was the first written notation made by the circuit court regarding the foreclosure of the marital home.

¶ 16 On May 12, 2011, Anne filed a second petition for adjudication of indirect civil contempt and a petition for attorney fees. Anne requested proof of David's attempts and/or sales from the farm equipment and vehicles that the circuit court had ordered him to sell. On May 31, 2011, Anne filed an emergency petition for hearing alleging that David had taken the children and refused to return them to her. On June 29, 2011, without prior notice to David or his attorney, the court conducted a hearing on Anne's emergency motion and ordered David to return the children to Anne.

¶ 17 On August 15, 2011, David filed a *pro se* motion stating that the parties' minor children "refuse[d] to go with their mother," and "Anne has ok[ayed] them to stay with me." On September 26, 2011, Anne filed a third petition for adjudication of indirect civil contempt. Anne alleged that David had failed to provide her with title to the Chevrolet Malibu, a vehicle she was awarded in April 2010. We note that the May 4, 2010, May 12, 2011, and September 26, 2011, petitions for adjudication of indirect civil contempt were not set for proceedings before the circuit court.

¶ 18 On January 5, 2012, David filed a *pro se* motion to modify custody where he requested full custody. On January 18, 2012, the circuit court ordered the parties to attend family counseling with their children, and took no further action regarding David's motion to modify custody until the parties had completed family counseling.

¶ 19 On July 5, 2012, David filed his second amended motion to modify child custody and support. David alleged that the minor children resided with him 80% of the time and that he paid all of the children's living expenses. David requested custody of the minor children; termination of his child support obligations; retroactive child support from Anne; and an award of attorney fees.

¶ 20 On October 31, 2012, Judge Levy heard the parties' arguments on David's second amended motion to modify child custody and support. The court awarded David primary physical custody of the minor children and terminated his child support obligation *instanter*. Moreover, Anne was ordered to pay half of all uninsured and deductible medical expenses for the minor children. Following this order, Judge Levy's involvement in the case ended. The case was assigned to another judge and then reassigned to Judge Mengarelli in November 2014.

¶ 21 On March 14, 2014, Anne filed a fourth petition for adjudication of indirect civil contempt. Anne claimed that she was entitled to \$60,000 in lost equity interest from the foreclosure of the marital home, which was a result of David's willful actions in failing to pay the mortgage and real estate taxes. Anne also alleged that David failed to pay child support from April 5, 2010, through February 2011, and also underpaid child support after David's income increased following a change in employment in April 2010. Anne further argued that David had not sold all farm equipment and vehicles as previously ordered, and of those he sold, he had failed to evenly split the proceeds.

¶ 22 David filed a motion to dismiss on December 26, 2014, where he argued that he could not be held in indirect civil contempt for not paying 100% of the mortgage

payments on the marital home because it had been foreclosed and sold prior to the April 5, 2010, judgment of dissolution of marriage. Thus, David posited that compliance was impossible. Additionally, David argued that he had paid all child support payments from January 27, 2011, through October 31, 2012, but ceased payment after he was awarded primary physical custody of the children.

¶ 23 On January 6, 2015, David filed a verified counterpetition for rule to show cause against Anne. David alleged that after the judgment of dissolution of marriage was filed on April 5, 2010, Anne sold farm equipment, but failed to split the proceeds with him. David alleged that Anne sold the following equipment: a diesel fuel tank, two Bobcat buckets, a spring-tooth harrow, a manure spreader, a post hole digger and two augers, two bush hog mowers, a hay wagon, a diesel pump, and a box blade. David requested that Anne be held in indirect civil contempt of court for failing to split proceeds. In response, Anne stated that she had sold only the diesel tank from the above-mentioned list of farm equipment and acknowledged that she had failed to split the proceeds with David.

¶ 24 On February 26, 2015, David filed a motion to set child support where he requested retroactive child support from July 5, 2012, through 2015. David also filed a verified supplemental counterpetition for rule to show cause arguing that Anne willfully violated the court's previous order by failing to pay half of the uninsured and deductible medical expenses for the children.

¶ 25 On March 10, 2015, the circuit court denied David's December 26, 2014, motion to dismiss Anne's petition for adjudication of indirect civil contempt. The court determined that David's issues would be addressed in the hearing on Anne's petition for

indirect civil contempt. The court ordered David to pay the sum of \$2,500 in attorney's fees.

¶ 26 On April 25, 2016, Anne filed a document with the circuit court titled "Position Statement of Petitioner." Anne listed four outstanding and pending motions for the court's determination: (1) Anne's petition for adjudication of indirect civil contempt; (2) David's verified counterpetition for rule to show cause; (3) David's motion to set child support; and (4) David's verified supplemental counterpetition for rule to show cause. Anne requested the following relief from the court: \$60,000 for lost equity in the marital home; \$12,051 in underpaid child support after David's income increased following a change in employment in April 2010; and \$40,050 for her equity interest in the farm equipment and vehicles that David failed to sell following the court's order. Anne's position statement further stated the following:

"On May 4, 2010, Anne filed her Motion to Amend Judgment & Motion for Contempt for non payment of the mortgage (Petitioner's Ex. #6). That matter was never called for hearing. Anne filed her 2nd Motion for Contempt, which is before the Court, on March [14], 2014. In which she seeks a judgment for \$60,000.00 in compensation for her equity interest lost in the [marital] property foreclosure."

¶ 27 On April 25, 2016, Judge Mengarelli held a hearing on the parties' outstanding motions: (1) Anne's petition for adjudication of indirect civil contempt; (2) David's verified counterpetition for rule to show cause; (3) David's motion to set child support; and (4) David's verified supplemental counterpetition for rule to show cause. Anne testified that she filed the May 4, 2010, motion to amend the judgment of dissolution of

marriage after she received notice in April 2010 of the marital home foreclosure sale. She stated that the \$100,000 in equity in the marital home had been lost by April 2010. In reference to the unsold farm equipment and vehicles, Anne testified that she could not operate and did not have access to the unsold items because David had moved most of the equipment to other properties owned by Joe Oros and his parents.

¶ 28 At the close of the evidence, Judge Mengarelli issued an oral ruling and then later entered a written order on May 5, 2016. The circuit court found Anne's testimony credible as to past-due child support, but ordered no payment based on the amount Anne owed David following the court's award of primary physical custody. Next, the court found David in indirect civil contempt of court and ordered him to pay Anne \$15,000 for failing to sell all ordered farm equipment and vehicles. Moreover, the court awarded David \$1,216.73 for Anne's share of uninsured and deductible medical expenses for the children, but denied his request for attorney fees.

¶ 29 Additionally, the court determined that Judge Levy had intended for Anne to receive more money from the sale of the marital home because David was going to receive more in the way of other assets. In particular, the court found David's testimony unreliable where he stated that he had informed his attorney and Judge Levy of the pending foreclosure during the August 2009 trial. In addressing David's unreliable testimony, Judge Mengarelli stated the following on the record:

"THE COURT: I just don't find it credible that you didn't know or that you informed the Court of the foreclosure at the original hearing. *** I cannot believe that it wouldn't be in the order. *** And I can't believe that it wouldn't be an

exhibit. What I'm going to do is award \$2,500 in attorney's fees for all contempt proceedings."

The circuit court found David in indirect civil contempt for noncompliance associated with the marital home, and ordered him to compensate Anne \$20,000 in lost equity. The court determined that Anne would receive \$20,000 of the marital assets from the marital home equity, given that Judge Levy had previously awarded Anne with 60% or \$60,000, and David with 40% or \$40,000, which equaled a difference of \$20,000. Moreover, the court ordered David to pay \$2500 for Anne's attorney fees. Anne was awarded \$36,283.27 in total. David filed a timely notice of appeal on May 31, 2016.

¶ 30

ANALYSIS

¶ 31 David argues on appeal that the circuit court abused its discretion in ordering monetary payment as a remedy to purge David of indirect civil contempt; where Judge Mengarelli found that Judge Levy was unaware of the foreclosure sale of the marital home in April 2010; and in ordering David to pay Anne's attorney fees. In response, Anne argues that the court's order was well supported by the evidence where it found David in indirect civil contempt for failure to sell all ordered vehicles and farm equipment; that the court did not find David in indirect civil contempt for failure to sell the marital home, but merely granted Anne's timely filed 2010 posttrial motion to modify the judgment of dissolution of marriage; that Judge Mengarelli did not abuse his discretion in finding that Judge Levy was unaware of the foreclosure in April 2010; and that the court did not abuse its discretion in ordering David to pay Anne's attorney fees.

¶ 32 We first address the circuit court's order finding David in indirect civil contempt for his noncompliance associated with the farm equipment and vehicles. The court's order required David to pay Anne \$15,000 in compensatory damages for his failure to sell all farm equipment and vehicles and then split the proceeds. Civil contempt is designed to compel future compliance with a court order and is avoidable through obedience. *In re Marriage of O'Malley*, 2016 IL App (1st) 151118, ¶ 26. There are two fundamental requirements for a civil contempt order: (1) the person held in contempt must have the ability to do what the court asked—to purge the contemptuous conduct, and (2) after he does so, the court cannot impose further sanctions. *In re Marriage of Sharp*, 369 Ill. App. 3d 271, 279 (2006). It is well settled in Illinois that a court is without authority to recompense an aggrieved party for the damages of the contemnor. *Harper v. Missouri Pacific R.R. Co.*, 282 Ill. App. 3d 19, 30 (1996). The theory behind this policy is that civil contempt is not a private remedy but punishment for an injury to the authority of the court, thus any fine imposed is payable to the public treasury and not to the plaintiff. *In re Marriage of Wilde*, 141 Ill. App. 3d 464, 473 (1986). When a contempt appeal is filed, the standard of review is an abuse of discretion. *O'Malley*, 2016 IL App (1st) 151118, ¶ 25. A circuit court abuses its discretion only when no reasonable person would take the view adopted by the circuit court. *Wilbourn v. Cavalenes*, 398 Ill. App. 3d 837, 848 (2010).

¶ 33 David argues that Judge Levy's order instructed both parties to sell the farm equipment and vehicles, and thus, failure to sell was as much Anne's fault as his own. We find this argument unpersuasive. First, testimony demonstrates that David, not Anne, was

in possession of the farm equipment and vehicles at issue. Second, Anne's testimony demonstrates that she could not operate and did not have access to the farm equipment and vehicles because David had moved the items to other properties. We do not take issue with the court's order finding David in indirect civil contempt, given David's ability to sell the equipment and then split the proceeds in order to comply with the order. However, we agree with David that ordering him to pay Anne \$15,000 in compensatory damages is inappropriate in Illinois in cases of civil contempt. See *Harper*, 282 Ill. App. 3d at 30. Instead, David should be allowed to purge himself of contempt through compliance, either by selling the remaining equipment in his possession, or in the alternative, paying Anne the value of the property that he plans to keep for his own use. Additionally, a determination regarding the value of the property that both parties have sold is necessary. The court is instructed to carry out the original intent of the judgment issued by Judge Levy. Thus, the court's order of compensatory damages for David's failure to sell the farm equipment and vehicles is reversed and the cause remanded.

¶ 34 Next, we address the circuit court's order finding David in indirect civil contempt for noncompliance associated with the marital home. Anne argues that Judge Mengarelli's ruling was not an award of compensatory damages, but a ruling on Anne's 2010 posttrial motion to modify the April 5, 2010, judgment of dissolution of marriage. We are not persuaded by this argument. In Anne's April 25, 2016, position statement and her testimony before Judge Mengarelli, Anne only addressed the 2010 posttrial motion as a matter that had not been set for proceedings, not one that was before the court for determination. In further support, Anne's position statement addressed four outstanding

and pending motions for the court's consideration, which included: (1) Anne's petition for adjudication of indirect civil contempt; (2) David's verified counterpetition for rule to show cause; (3) David's motion to set child support; and (4) David's verified supplemental counterpetition for rule to show cause. Thus, Anne did not request the court to address her motion to modify the April 5, 2010, judgment of dissolution of marriage at that time. Moreover, the court's order made specific reference in its findings to Anne's petition for indirect civil contempt. Therefore, we conclude that the court addressed Anne's 2014 petition for indirect civil contempt in the court's May 5, 2016, order. We note, however, that outstanding motions remain pending before the circuit court.

¶ 35 Additionally, we observe that the record supports Judge Mengarelli's determination that Judge Levy was unaware of the foreclosure at the time of the April 5, 2010, order. We review the circuit court's factual determination under a manifest weight of the evidence standard of review. *People v. Coleman*, 183 Ill. 2d 366, 384-85 (1998) ("The manifestly erroneous standard represents the typical appellate standard of review for findings of fact made by a trial judge."). The record indicates that David failed to inform the court of the pending foreclosure of the marital home during the August 2009 dissolution of marriage trial. In particular, the transcripts of the five-day trial do not reference the foreclosure of the marital home, even though the two-unit duplex foreclosure was discussed multiple times. Anne testified in August 2010 that she was unaware of the pending foreclosure of the marital home during the August 2009 trial, given that she was not personally served notice and did have knowledge about the foreclosure until April 2010. Therefore, we conclude that Judge Mengarelli's findings in

that regard were well supported by the record and not contrary to the manifest weight of the evidence.

¶ 36 Given our aforementioned determination that the circuit court addressed Anne's 2014 petition for adjudication of indirect civil contempt, we now address the indirect civil contempt finding for David's failure to sell the marital home and split the proceeds. As a result of David's failure to pay the mortgage, which resulted in the foreclosure sale, the court ordered him to pay Anne \$20,000 in compensatory damages. As previously determined, a court cannot recompense an aggrieved party for the damages of the contemnor in a civil contempt proceeding. See *Harper*, 282 Ill. App. 3d at 30. Moreover, the person held in contempt must have the ability to do what the court asked—to purge the contemptuous conduct. *Sharp*, 369 Ill. App. 3d at 279. Although David has the ability to purge himself of indirect civil contempt through the sale of the farm equipment and vehicles, he has no similar ability to comply with the court's order regarding the marital home because it was foreclosed in March 2010 and no equity remained. As a result, we find that indirect civil contempt was an improper remedy. On remand, we order the circuit court to conduct a hearing to determine the appropriate remedy for David's failure to comply with the judgment of dissolution of marriage.

¶ 37 Lastly, we address the circuit court's order finding David in indirect civil contempt and ordering him to pay \$2500 in attorney fees. The standard of review for a circuit court's determination of awarding attorney fees and costs is an abuse of discretion. *O'Malley*, 2016 IL App (1st) 151118, ¶ 60. Although the private litigant who brings the fact of an indirect contempt before the court performs a valuable service to the court

(*Frank B. Hall & Co. v. Payseur*, 99 Ill. App. 3d 857, 862 (1981)), Illinois law finds it appropriate in both civil and criminal contempt cases to require the contumacious party to bear the reasonable costs and attorney fees of a contempt proceeding. *Harper*, 282 Ill. App. 3d at 30; *Wilde*, 141 Ill. App. 3d at 473; *Payseur*, 99 Ill. App. 3d at 862. "Although there may be some incidental benefit to the moving party, it would be inequitable not to require the contumacious party to pay such costs." *Payseur*, 99 Ill. App. 3d at 862. Due to the extensive litigation surrounding the case at issue, as well as the court's finding that David failed to comply with the court's order regarding the sale and division of proceeds from the farm equipment and vehicles, we conclude that the court did not abuse its discretion in awarding attorney fees.

¶ 38

CONCLUSION

¶ 39 We reverse and remand the circuit court's order where it was without authority to recompense Anne, the aggrieved party, compensatory damages where David failed to sell the farm equipment and vehicles. On remand, we instruct the court to determine what property was sold by both parties, and at what sale price, as well as the fair market value of any unsold farm equipment and vehicles that still remain in the possession of either party, but which were required to be sold and proceeds divided, as part of the original judgment of dissolution. Next, with respect to the order requiring David to pay Anne damages for her lost equity in the marital home, we vacate that portion of the judgment. On remand, we order the circuit court to conduct a full hearing to determine the appropriate remedy for David's failure to comply with the original judgment. Finally, we affirm the court's order requiring David to pay Anne's attorney fees.

¶ 40 For the foregoing reasons, the judgment of the circuit court of Madison County is hereby affirmed in part, reversed in part, vacated in part, and remanded for further proceedings consistent with this order.

¶ 41 Affirmed in part, reversed in part, vacated in part, and remanded for further proceedings.