2019 IL App (1st) 172432-U
Order filed: March 15, 2019

FIRST DISTRICT
Fifth Division

No. 1-17-2432

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN RE MARRIAGE OF:	)	Appeal from the
CAREY STREY,	)	Circuit Court of
	)	Cook County
Petitioner-Appellee,	)	
	)	
and	)	No. 16 D 364
	)	
DAVID STREY,	)	Honorable
	)	Elizabeth Loredo Rivera,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent-appellant filed a *pro se* appeal from the judgment dissolving his marriage to petitioner-appellee. We affirmed, finding that respondent had failed to provide a sufficient record to support any of his contentions of error.

¶ 2 Respondent-appellant, David Strey, filed a *pro se* appeal from the judgment dissolving his marriage to petitioner-appellee, Carey Strey. Respondent contends that the trial court made numerous errors necessitating reversal of the property distribution, child support award, and maintenance award. Respondent also contends that the court erred by imposing attorney fees

and costs against him, and requiring him to pay an unfair share of his child's college expenses. We affirm.[1]

¶ 3 The parties were married on December 16, 1995, and had two children born during the course of the marriage, namely, Dawson, born September 23, 1998, and Griffin, born January 24, 2003. Petitioner subsequently filed a petition for dissolution of marriage. On June 28, 2017, the court entered a final shared parenting plan and allocation judgment providing for the allocation of parental responsibilities and parenting time. Respondent was designated the primary residential parent, with petitioner awarded parenting time with the minor child, Griffin, on alternate weekends from Friday after school through Sunday at 8 p.m., and each week from Wednesday after school through Friday at 3 p.m.

¶ 4 The court subsequently held a trial and then entered a judgment for dissolution of marriage on August 31, 2017, which incorporated the final shared parenting plan and allocation judgment. The record on appeal does not contain a transcript of the trial or a certified bystander's report.

¶ 5 In the judgment for dissolution of marriage (judgment), which is included in the record on appeal, the court stated that petitioner was 47 years old as of the date of the judgment, and that she was employed as a "crew member" at Trader Joe's. She had previously worked other jobs as a bartender and as a cosmetics salesperson, but she now only worked at Trader Joe's. Her 2016 W-2 form reflected that she earned $31,450 for the 2016 tax year.

¶ 6 The court summarized petitioner's testimony that she and respondent had lived in the marital home located at 2145 Prairie Street in Glenview, Illinois, with the children in a "very

[1]In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

stressful environment." According to petitioner, respondent had "emotionally abused" her since she filed for divorce, by threatening her, going through her wallet, and photographing her journals and prescription medicines. Due to respondent's "relentless harassment," she had been "forced to bounce around to friends' homes to prevent the conflict within the home having a negative effect not only on her, but also the children." Petitioner also testified that she received a $300,000 inheritance contained in an IRA and brokerage account, that respondent had a limited power of attorney to withdraw from those accounts, and that respondent had "inappropriately managed those funds." The trial court found that those accounts had been "significantly diminished" due in part to respondent's "inappropriate use of the funds."

¶ 7 The court then summarized certain portions of respondent's testimony, specifically, that he was 56 years old, in "good health," and had operated Strey Builders from 2000 to 2014. As of the date of the judgment, respondent was employed as a project manager with McDermott Construction, Inc. Respondent's W-2 form showed that he earned $75,600 for the 2016 tax year.

¶ 8 The court noted that during the pendency of these proceedings, petitioner had filed against respondent an emergency motion to compel discovery compliance, an emergency petition to execute a forbearance agreement, and three emergency petitions for a rule to show cause. On March 1, 2017, respondent was held in indirect contempt of court and ordered to pay $100 per day for every day he did not execute certain documents related to the sale of the marital home. The court further noted that respondent had been late to appear on the first day of trial, despite a properly served notice pursuant to Illinois Supreme Court Rule 237(b) (eff. July 1, 2005) (hereinafter Rule 237(b) notice) and the court's prior order requiring both parties to appear. Also, the court found that respondent's testimony was "sorely lacking in credibility as to many issues, including his conduct during attempts to list the marital residence for sale, among others."

¶ 9 The court then addressed the distribution of marital assets, finding that since respondent earned 70% of the parties' combined gross income and has a greater ability than petitioner to acquire assets and increase his earning capability, petitioner should be awarded a disproportionate amount of the proceeds from the marital estate. Specifically, the court awarded petitioner 55% of the proceeds from the marital estate, while awarding respondent 45%.

¶ 10 With respect to a loan taken out by respondent and co-signed by his uncle, Edward Koenig, the court found from the evidence that petitioner "never saw the original loan documents, she never signed the original loan documents, she never signed any documents saying that she would repay Koenig, Koenig never contacted [petitioner] to request payment, and [petitioner] believed that Koenig gifted the funds. Moreover, [petitioner] testified that she has no idea what [respondent] did with the funds he borrowed with Koenig's co-signature." Accordingly, the court found that respondent was solely responsible for repayment of the loan.

¶ 11 With respect to maintenance, the court noted that petitioner's financial affidavit indicated that she has a "monthly shortfall" of $4,101.27, and that it was "unlikely" that her income would increase significantly. The court found that respondent was in a "much better financial position" than petitioner, and it ordered him to pay petitioner the guideline maintenance amount of $948 per month.

¶ 12 With respect to child support for the minor child, Griffin, the court determined that the parties had a 50/50 parenting time schedule, and it ordered respondent to pay petitioner the guideline amount of $150.73 per month until Griffin's emancipation.

¶ 13 With respect to Griffin's medical expenses, extracurricular activities, and pre-college education expenses, the court ordered respondent to pay 60% of those expenses and petitioner to pay 40%.

¶ 14 With respect to Dawson's college expenses, the court found that Dawson should be responsible for 1/3 of his tuition expenses. Of the remaining 2/3 of tuition expenses, respondent must pay 60% thereof, with petitioner responsible for paying the remaining 40%. As to the remainder of Dawson's college expenses, including room, board, transportation costs, books, fees, costs and living expenses, respondent was ordered to pay 60% thereof and petitioner was ordered to pay 40%. College contribution for Griffin was "reserved due to his age."

¶ 15 Finally, with respect to attorney fees and costs/sanctions, the court ordered respondent to pay petitioner $7,107.50 in attorney fees for his failure to comply with the "various orders set forth in [petitioner's] February 24, 2017, petition for attorney fees and costs, and her May 10, 2017, supplement to her petition." The court also ordered respondent to pay petitioner $1,400 in sanctions pursuant to a March 1, 2017, order that held respondent in indirect civil contempt of court. Lastly, the court ordered respondent to pay petitioner $675 in attorney fees for his failure to timely appear for trial on June 28, 2007, despite being served a Rule 237 notice to appear and despite a prior court order from June 16 requiring the parties to appear on June 28 at 10 a.m.

¶ 16 Respondent filed this appeal from the August 31, 2017, dissolution judgment.

¶ 17 Preliminarily, petitioner argues that respondent's appeal should be dismissed because his statement of facts was argumentative in violation of Illinois Supreme Court Rule 341(h)(6) (eff. Nov. 1, 2017), and because he failed to cite to the record in violation of Rule 341(h)(7) (*id.*), and failed to cite the applicable standard of review in violation of Rule 341(h)(3) (*id.*). We decline to dismiss the appeal, but, for the reasons that follow, we find that respondent's failure to provide us with an appropriate record (and his failure to cite the appropriate standard of review for certain issues) requires that we affirm the trial court's judgment.

¶ 18 First, respondent contends that the trial court erred when, following a hearing, it refused to certify his bystander's report of the trial in this case. Respondent contends that the hearing was not "proper" and that the bystander's report should have been certified; however, he has provided us with no record of the hearing, and therefore we presume that the order refusing to certify the bystander's report was not in error. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 19 Next, respondent argues that the trial court erred by starting trial on June 28, 2017, without proper notice to him. The record belies respondent's argument, as it contains a Rule 237(b) notice, with proof of service indicating that it was mailed to respondent's attorney, Michael Weiman, on June 13, 2017, notifying him that respondent was to personally appear at the trial in this matter on June 16, 2017, at 9:30 a.m. and at any continuance thereof. See Ill. S. Ct. R. 11(a) (eff. July 1, 2017) (where a party is represented by an attorney of record, service shall be made upon the attorney). The record also contains an order prepared by Mr. Weiman and entered on June 16, 2017, which stated that with the "agreement of counsel," the case was continued to June 28, 2017, at 10 a.m. and that all parties were required to appear. Thus, contrary to respondent's argument, he had notice to appear on June 28.

¶ 20 Next, respondent contends that the trial court erred by starting the trial on June 28 without Mr. Weiman, and with only Mr. Weiman's associate attorney present in court to represent him. The dissolution judgment stated that respondent was present in court and "represented by counsel." Respondent contends that the court:

"[F]ailed to mention *** that on 6/28/17 this counsel was not [Mr. Weiman] but Weiman's associate attorney [Mr.] Cash who [respondent] only met briefly a handful of times over the span of his case. [Respondent] never discussed the case with associate attorney Cash

even on the day of trial. [The trial court] asked associate attorney Cash if he was ready for trial, Cash told [the trial court] that this was not his case to try and he was not ready for trial. He said he did not study or rehearse for this case and that he did not have any paperwork for trial with him. [The trial court] disregarded what attorney Cash told her and called the case for immediate trial." Respondent contends that the trial court denied him a fair trial by forcing him to be represented by "associate attorney Cash who in open court admitted he wasn't prepared to try the case."

¶ 21 Respondent has failed to provide us with the trial transcript from June 28, 2017, or an acceptable substitute such as a certified bystander's report, that would support his contentions that the trial court forced him to begin trial with an attorney who stated he was unready. As the appellant, respondent bears the burden of presenting a sufficiently complete record of the proceedings at trial to support his claim of error, and where the issue on appeal relates to the conduct of a trial, this issue is not subject to review absent a report or record of the proceeding. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001). Further, respondent has failed to cite any authority indicating what our standard of review should be, nor has he cited any authority supporting his argument that the court erred in beginning trial with only the associate attorney initially present. Accordingly, the issue is forfeited. See Ill. S. Ct. R. 341 (h)(7) (eff. Nov. 1, 2017).

¶ 22 Next, respondent argues that the trial court abused its discretion by ending the pre-trial prove-up hearing prior to the parties reaching a settlement agreement. Respondent failed to provide this court with the record of the proceedings as to any prove-up hearing, or an acceptable substitute such as a certified bystander's report, and this deficiency in the record must be resolved against respondent as the appellant. See *Foutch*, 99 Ill. 2d at 392 ("Any doubts which

may arise from the incompleteness of the record will be resolved against the appellant."). Accordingly, we find no abuse of discretion.

¶ 23 Next, respondent argues that the trial court deprived him of due process on the first day of trial by making comments that demonstrated its inability to be impartial toward him. See *People v. Faria*, 402 Ill. App. 3d 475, 479 (2010) (the trial court must ensure that it remains impartial in its conduct of the trial). Respondent's failure to provide us with a record of the first day of trial requires us to resolve this issue against him. *Foutch*, 99 Ill. 2d at 392.

¶ 24 Next, respondent argues that the trial court again demonstrated its inability to be impartial toward him when it "deliberately and willingly" made him insolvent via the distribution of the marital property. Respondent has provided this court with no record of any such "deliberate" decision on the part of the trial court to render him insolvent, or that he was made insolvent, and accordingly we must resolve this issue against him. *Id*.

¶ 25 Next, respondent argues that the trial court deprived him of due process by making 32 "derogatory" comments about him in its judgment which exhibited its bias toward him. Respondent fails to identify any of the 32 allegedly derogatory comments, thereby forfeiting review of the issue. Ill. S. Ct. R. 341 (h)(7) (eff. Nov. 1, 2017).

¶ 26 Next, respondent contends that the trial court erred by finding him in indirect civil contempt and imposing sanctions of $100 per day ($1,400 in total) for the 14 days during which he held up the sale of the marital residence by refusing to sign the real property disclosure statements. We review the contempt/sanctions order to determine whether it was against the manifest weight of the evidence or an abuse of discretion. *In re Marriage of Logston*, 103 Ill. 2d 266, 286-87 (1984).

¶ 27 Respondent argues on appeal that he refused to sign the disclosure statements for 14 days because they failed to disclose certain material defects in the residence, namely, that the residence had mold and the foundation was leaking, and because he knew that the signing of such "false" disclosure statements was illegal and potentially damaging to his reputation as a builder. Respondent argues that "all parties" including the trial court, petitioner, petitioner's attorney, respondent's attorney, and the real estate broker were aware of the mold and that the foundation was leaking, and that he signed the disclosure statements after 14 days only because the trial court "coerced" him into doing so "through duress and intimidation." Respondent contends that not only should the contempt/sanctions order be reversed because he should not have been found in contempt and sanctioned for failing to sign illegal disclosure statements, but that the trial court should be subject to discipline by the Illinois Courts Commission for signing the order, and that petitioner's attorneys should be fined and disbarred for presenting the order to the court for its signature. However, respondent has provided this court with no report of proceedings relating to sanctions, nor any record supporting his argument that the marital residence had mold and that the foundation was leaking, or that the disclosure statements were false or that the trial court and opposing attorneys engaged in any misconduct against him regarding the entering of the contempt/sanctions order. Accordingly, in the absence of such a record, respondent has failed to show that the contempt/sanctions order was against the manifest weight of the evidence or constituted an abuse of discretion or that the trial court and attorneys should be subject to discipline. *Foutch*, 99 Ill. 2d at 392. Rather, we must presume that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Id.*

¶ 28 Next, respondent contends that the trial court erred by ordering him to pay child support to petitioner in the guideline amount of $150.73 per month for Griffin, based on their 50/50

parenting time schedule. We review a court's determination of child support obligations for abuse of discretion. *In re Keon C.*, 344 Ill. App. 3d 1137, 1142 (2003).

¶ 29 Respondent argues that he and petitioner do not actually split parenting time for Griffin on a 50/50 basis, that in fact Griffin spends almost all of his time with respondent and not with petitioner, and therefore that petitioner should pay him $338.58 per month in child support and also reimburse him $8,552.49 for the child support payments that he previously paid to her. Respondent further contends that petitioner's attorneys engaged in fraud by asking for child support, knowing that petitioner was not actually parenting Griffin on a 50/50 basis with respondent. However, respondent has failed to provide us with a report of proceedings as to the evidence upon which the court based its child support determination, or any record supporting his argument that petitioner and respondent are not splitting parenting time on a 50/50 basis or that petitioner's attorneys engaged in fraud by asking for child support. Accordingly, in the absence of such a record, respondent has failed to show that the court abused its discretion by ordering him to pay petitioner child support for Griffin in the guideline amount of $150.73 per month based on a 50/50 parenting time schedule. *Foutch*, 99 Ill. 2d at 392. Rather, we must presume that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Id*.

¶ 30 Next, respondent argues that the court's property distribution was in error, as it failed to provide him with enough monies to pay for his health care costs. We review the property distribution for an abuse of discretion. *In re Marriage of Larocque*, 2018 IL App (2d) 160973, ¶ 66.

¶ 31 Respondent contends that the court erred in finding that he was in good health, that in fact he has dangerously high blood pressure and an enlarged prostate, and therefore that the court

should have awarded him more monies to help him pay for his healthcare. However, respondent has failed to provide us with any record supporting his argument regarding his ill health, or that any evidence of his ill health was before the trial court, and in the absence of such a record, respondent has failed to show that the court's property distribution was an abuse of discretion for failing to provide him enough monies to pay for his health costs. Rather, we presume that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392.

¶ 32 Next, respondent argues that the court abused its discretion in all of its calculations for property distribution, maintenance, child support, and college expenses, as the court based all those calculations on the erroneous finding that his salary was $75,600 per year (his leap year salary), when in fact his salary in non-leap years was only $72,900 per year. Respondent also contends that the court erroneously found that petitioner's salary was only $31,450, when in fact she earned more than $40,000, and that it also erred in finding that her income was unlikely to increase significantly. Again, respondent has failed to provide us with a record supporting his argument regarding the improper income calculations, and therefore we presume that the awards entered by the trial court for property distribution, maintenance, child support, and college expenses were in conformity with law and had a sufficient factual basis and did not constitute an abuse of discretion. *Id*.

¶ 33 Next, respondent contends that the court erred in ordering him to pay petitioner the guideline amount of $948 per month in maintenance without considering all the relevant factors set forth in section 504 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/504 (West 2018)). Section 504 provides that the court shall consider all relevant factors when deciding whether to award maintenance, including: the income and property of each party; the

needs of each party; the earning capacity of each party; the age of each party; the duration of the marriage; and the standard of living established during the marriage. *Id*. We review the maintenance award for an abuse of discretion. *In re Marriage of Brill*, 2017 IL App (2d) 160604, ¶ 26.

¶ 34 Our review of the judgment shows that the trial court expressly considered the relevant section 504 factors, compared the parties' respective incomes, found that respondent was in a "much better financial position" than petitioner and that a guideline maintenance award of $948 per month was appropriate after more than 20 years of marriage. Respondent contends that the income findings were in error, but as he has failed to provide us with a supporting record, we presume that the maintenance award was in conformity with law and had a sufficient factual basis and did not constitute an abuse of discretion. *Foutch*, 99 Ill. 2d at 392.

¶ 35 Next, respondent argues that the court erred by granting petitioner's petition and supplemental petition for attorney fees and costs, and ordering him to pay $7,107.50 in attorney fees as a sanction for his failure to comply with various court orders. We review the court's sanctions order for an abuse of discretion. See *Hartnett v. Stack*, 241 Ill. App. 3d 157, 172 (1993).

¶ 36 The petition for attorney fees explained that the court ordered the parties to list the marital home for sale by January 9, 2017. On January 25, 2017, petitioner filed a rule to show cause for respondent's failure to sign the listing agreement. On February 1, 2017, the court entered an order requiring respondent to sign the listing agreement within 48 hours. Respondent failed to sign the listing agreement, and petitioner filed an emergency petition for a rule to show cause to enforce the terms of the order on February 6, 2017. Multiple continuances were entered by the trial court, requiring further time expended by petitioner's attorneys. Petitioner contended

that she had incurred $3,585 in attorney fees and costs in connection with the petition for rule to show cause and the emergency petition for a rule to show cause.

¶ 37 In her supplemental petition, petitioner explained that she had incurred additional attorney fees (bringing the total to $7,107.50) related to respondent's failure to comply with the following orders: the January 6 order requiring the parties to list the marital home for sale; the March 10, 2017, order requiring the parties to follow the reasonable recommendations of the realtor; and the March 17, 2017, order requiring respondent to unlock the office inside the marital home and give petitioner access to the office and crawlspace within 24 hours. Specifically, petitioner contended that respondent removed the "For Sale" sign from the front lawn of the marital residence on March 16, 17, and 18, and failed to give petitioner access to the office and crawlspace. Due to respondent's failure to comply with the court's March 10 and March 17 orders, petitioner was forced to file an emergency petition for a rule to show cause to enforce the terms of both orders.

¶ 38 Petitioner set forth her attorney's hourly rates, as well as an affidavit from her attorney attesting that the facts set forth in the petition and supplemental petition were accurate and correct.

¶ 39 In its judgment order, the court found that the petition and supplemental petition had accurately set forth respondent's failure to comply with the January 6, February 1, March 10, and March 17 court orders and that his failure to comply with the orders was "without compelling cause or justification." The court granted petitioner's request for $7,107.50 in attorney fees.

¶ 40 Respondent contends that, contrary to the court's finding, he had compelling reasons for failing to comply with the January 6, February 1, March 10, and March 17 orders. However, respondent has failed to provide us with a record supporting his reasons for violating the court

orders, and therefore we presume that the award of attorney fees was supported by law and the facts of the case and was not an abuse of discretion. *Foutch*, 99 Ill. 2d at 392.

¶ 41 Next, respondent contends that the court "made the mistake of disregarding concrete evidence provided at trial that [the loan taken out by respondent and co-signed by his uncle, Edward Koenig], is a marital loan of the parties" and that the court erred by making respondent solely responsible for the payment thereof. Respondent has failed to provide us with a record of the "concrete evidence" showing that the loan was a marital loan of the parties, rather than a loan taken out by respondent for himself, and therefore we presume that the court's order finding respondent solely responsible for repayment of the loan was in conformity with law and had a sufficient factual basis and did not constitute an abuse of discretion. *Id*.

¶ 42 Finally, respondent contends that his counsel provided ineffective assistance. However, "[w]hile the right to the effective assistance of counsel is firmly grounded in our criminal jurisprudence (see *Strickland v. Washington* (1984), 466 U.S. 668), no such right exists on the civil side." *Kalabogias v. Georgou*, 254 Ill. App. 3d 740, 750 (1993). Accordingly, respondent's claim is without merit. *Id*.

¶ 43 For all the foregoing reasons, we affirm the circuit court.

¶ 44 Affirmed.