

No. 1-09-1981

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).

FIFTH DIVISION
January 28, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF ALAN P. COATES,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
and)	No. 05 D 6015
)	
JADWIGA M. COATES,)	Honorable
)	Sanjay T. Taylor,
Respondent-Appellee.)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Justices Joseph Gordon and Epstein concurred in the judgment.

O R D E R

HELD: Where petitioner failed to show that the trial court abused its discretion in denying his motion to reconsider a judgment for dissolution of marriage, the trial court's judgment was affirmed.

Petitioner Alan P. Coates appeals from the trial court's denial of his motion to reconsider a judgment for dissolution of

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marriage. Petitioner contends that the trial court abused its discretion in failing to make proper findings regarding the division of marital property, awarding the marital home to respondent, Jadwiga M. Coates, and awarding maintenance to respondent. Although respondent has not filed a brief, we will consider this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-33 (1976). We affirm.

The record shows that the parties were married on September 9, 1994, and had one child during their marriage, born in 1995. Petitioner filed a petition for dissolution of marriage on June 2, 2005, and respondent counter-petitioned. In the written judgment for dissolution of marriage, the trial court stated that it heard the evidence, assessed the credibility of the parties and the stipulations entered into evidence by the parties, and applied the applicable provisions of the Illinois Marriage and Dissolution of Marriage Act (Act). The court then found that irreconcilable differences caused the breakdown of the marriage, respondent proved her claim of dissipation against petitioner for \$50,000, and petitioner failed to prove his claim of dissipation against respondent. The court determined that the net value of the marital residence was \$50,000, and awarded that residence to respondent "free and clear of all claims of the petitioner, with the net equity awarded as a set off against petitioner's

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dissipation." Petitioner was also ordered to pay respondent, for a period of 10 years, \$3,225 per month for unallocated maintenance and support. Respondent was granted sole custody of the parties' child, subject to petitioner's visitation rights. The trial court allocated certain other responsibilities, debts, and assets that are not at issue in this appeal.

On November 7, 2008, petitioner filed a motion to reconsider, alleging that the court's findings with respect to the claim of dissipation, distribution of the marital home equity, and the award of maintenance were an abuse of the court's discretion and against the manifest weight of the evidence. Petitioner specifically maintained that the court failed to apply any of the factors listed in section 503(d) of the Act (750 ILCS 5/503(d) (West 2008)), in making an award of marital property. He further contended that it was impossible to determine the meaning of the court's award of the \$50,000 equity in the marital home to respondent as a set off against petitioner's dissipation. Moreover, petitioner maintained that the court abused its discretion by ordering him to pay unallocated support to respondent in the amount of \$3,225 per month for 10 years.

The trial court denied petitioner's motion to reconsider. In doing so, the court stated that there was no record of the trial proceedings, and it did not have an independent recollection of the case. However, based on its notes, the

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dissipation finding was premised on petitioner's failure to explain what he did with the funds he withdrew from his retirement account when the marriage ended. Although the court did not recall its oral ruling, as a matter of practice it explains the basis of its decision, including how the section 503(d) factors applied. The court further related that its award of the \$50,000 equity in the marital home to respondent was not ambiguous as the clear intent of the judgment was to "extinguish the dissipation liability petitioner incurred by awarding his interest in the marital home to respondent." Moreover, the court held that there was evidence that petitioner's monthly income was more than what petitioner claimed it was in his motion to reconsider, and its award of unallocated support was not an abuse of discretion.

On appeal from that order, petitioner contends that the court's ruling was against the manifest weight of the evidence and thus an abuse of discretion. Defendant specifically maintains that the trial court erred in failing to make findings pursuant to section 503(d) of the Act as to the division of marital property, awarding the marital home to respondent, and awarding maintenance to respondent. We disagree.

We initially note that the order being appealed from is not found in the record, but is included in the appendix of petitioner's brief. Attachments to briefs not otherwise before

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the reviewing court cannot be used to supplement the record. *Jones v. Police Board of the City of Chicago*, 297 Ill. App. 3d 922, 930 (1998). However, without condoning petitioner's failure to supplement the record, we believe that it would be a harsh sanction under the circumstances to dismiss his appeal for that reason alone. The instant record is short, the facts uncomplicated, and we believe the matter is one within our discretion. See *Silny v. Lorens*, 73 Ill. App. 3d 638, 643 (1979).

On review, the trial court's distribution of marital assets will be reversed only if its determination was against the manifest weight of the evidence and thus an abuse of discretion. *In re Marriage of Abma*, 308 Ill. App. 3d 605, 614 (1999). The judgment will be deemed against the manifest weight of the evidence only if a contrary conclusion is clearly evident. *Abma*, 308 Ill. App. 3d at 614. The same standard applies to the trial court's decision regarding maintenance. *In re Marriage of Nicks*, 177 Ill. App. 3d 76, 80 (1988).

In the case at bar, the trial court expressly indicated in its order denying petitioner's motion to reconsider that "there is no record of the trial proceedings," and the court did "not have an independent recollection of this case." Although there is no record of the trial proceedings, defendant was required to provide this court with an acceptable substitute, such as a

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bystander's report pursuant to Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005). *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984); *In re Marriage of Rogers*, 213 Ill. 2d 129, 140 n.2 (2004). As the appellant, it is petitioner's responsibility to provide a complete record on appeal. *Foutch*, 99 Ill. 2d at 391-92. In the absence of a complete record, we presume that the trial court's order conformed to the law and "had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92. While the court's dissolution order confirms that it considered the factors set out in the Act, without the trial transcripts or an adequate substitute, we have no way of knowing what information was used in this consideration. Under these circumstances, we presume that the trial court's decision was based on sufficient facts and conformed to the law. *Foutch*, 99 Ill. 2d at 391-92.

Nevertheless, petitioner contends that the trial court abused its discretion in awarding the marital residence to respondent when it failed to apply any of the factors under section 503(d) of the Act. In a related argument, petitioner argues that it is impossible to determine the meaning of the court's award of the \$50,000 equity in the marital home to respondent as a set off against his dissipation.

The trial court was charged with dividing all marital property in just proportions based on its consideration of the factors listed in section 503(d) of the Act. *In re Marriage of*

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Parker, 252 Ill. App. 3d 1015, 1018 (1993). In both the written judgment and the order denying petitioner's motion to reconsider, the trial court stated that it had considered those factors, and there is nothing in the record to suggest that the court abused its discretion in doing so. We further note that in its order denying petitioner's motion to reconsider, the court stated that its judgment was not ambiguous, and the dissipation finding was based on petitioner's failure to explain what he did with the funds that he withdrew from his retirement account. Since petitioner has not provided any support for his assertions to the contrary, we presume that the trial court's decision to award the marital residence to respondent was proper. *Abma*, 308 Ill. App. 3d at 613.

Petitioner also contends that the trial court abused its discretion by ordering him to pay unallocated support to respondent in the amount of \$3,225 per month for 10 years. In doing so, he maintained that his net monthly income was \$4,620, and thus the unallocated monthly support amounted to 69% of his net monthly income. Petitioner, however, has provided no support for his assertions, and the trial court rejected this claim in its order denying his motion to reconsider, noting that there was evidence that petitioner's net monthly income was \$6,135.

In light of the trial court's statements and petitioner's failure to provide an adequate substitute for the report of

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proceedings, we invoke the presumption that the trial court's findings comported with the evidence and was proper. *Abma*, 308 Ill. App. 3d at 613.

For the foregoing reasons, we affirm the judgment of the circuit court.

Affirmed.