

FIRST DIVISION
May 16, 2011

No. 1-09-1604

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 JUDICIAL DISTRICT

<i>In re</i> THE MARRIAGE OF LORI SHERMULIS,)	Appeal from the
)	Circuit Court of
Petitioner-Appellee,)	Cook County.
)	
and)	No. 06 D5 30768
)	
DAVID SHERMULIS,)	Honorable
)	Patrick T. Murphy
Respondent-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Lampkin concur with the judgment.

ORDER

HELD: In this action for the dissolution of the parties' marriage, the circuit court properly determined the husband's child support obligations, distributed the parties' assets and liabilities, and divided certain attorney and other fees among the parties. Additionally, the husband's assertions of a due process violation are unfounded.

This appeal arises out of an order entered by the circuit court dissolving the marriage of petitioner-appellee, Lori Shermulis, and respondent-appellant, David Shermulis. In that order, the circuit court granted Lori sole custody of the parties' two minor children, ordered David to pay child support, divided the parties' marital assets and debt, and addressed the payment of the parties' attorney and other fees. David filed a motion to reconsider, which was granted in part and denied

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in part. On appeal, David asserts that the trial court erred by improperly: (1) calculating his child support payments; (2) dividing the proceeds of the sale of the marital home; (3) ordering David to assume the majority of marital debt and pay certain attorney and other fees; and (4) entering final judgment following a hearing at which David was neither present nor represented by counsel. For the following reasons, we affirm.

I. Background

On November 28, 2006, Lori initiated this litigation by filing a petition to dissolve her marriage to David. Lori's petition alleged that the parties were married in August of 2000. The parties had two children together, a nearly six-year-old son and a four-year-old daughter. Lori was a 36-year-old stay-at-home mother at the time the petition was filed, and David was a 46-year-old self-employed dentist. The petition cited irreconcilable differences between the parties and asked the court to dissolve the marriage, award Lori both sole custody of the children and child support, and divide the marital property equitably.

David was served with a copy of the complaint on February 19, 2007, beginning over two years of highly contested proceedings in the circuit court. During the course of litigation below, Lori was represented by three different attorneys and David was represented by at least five. Additionally, both parties filed numerous emergency motions and petitions for rules to show cause. We outline only those proceedings necessary to our resolution of the issues on appeal.

Shortly after David was served, Lori sought and received an emergency order of protection awarding her custody of the children and exclusive possession of the family home. This order was based upon Lori's allegations of physical abuse and harassment. Lori also successfully obtained an

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emergency temporary restraining order barring David from expending marital assets without her consent, based upon allegations that David had already followed through on prior threats to deplete marital assets by incurring excessive credit card debt. These orders were subsequently vacated, and an agreed order was entered in March of 2007 which, in relevant part, provided: (1) Lori would have temporary exclusive possession of the marital home and custody of the children; (2) David would have specified visitation with the children, would pay Lori \$200-per-week in child support, and would timely pay for the mortgage and upkeep of the marital home; and (3) the parties would participate in mediation.

The mediation failed to produce an agreement between the parties. In July of 2007, citing his support obligations, his increased expenses due to residing outside the marital home, and large credit card debt, David filed a motion seeking permission to either sell the marital home or obtain a home equity loan. The court entered an order requiring the parties to cooperate in obtaining a \$75,000 home equity loan, with the proceeds to fund interim attorney fees, fees for a court-appointed child representative, Lori's medical care, and expenses for the marital home. The parties were not able to obtain such a loan, in part due to the outstanding credit card debt.

This matter continued into 2008, with the parties continuing to vigorously dispute issues of visitation and finances. A trial was initially set for May of 2008. However, that trial date was stricken following the issuance of two rules to show cause for David's failure to comply with prior orders requiring him to pay the mortgage on the marital home and provide health insurance for Lori and the children. David was also ordered to pay for the fees of the court-appointed child representative. In June of 2008, an order was entered reflecting the parties agreement to put the

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marital home up for sale.

A second trial date was scheduled for October 6, 2008. However, at that time, the marital home was subject to a foreclosure proceeding. Therefore, the court continued the matter for further status. The circuit court's October 6 order contemplated the possibility that Lori might be able to obtain a loan to bring the mortgage up to date. The parties' attorneys were also directed to complete any stipulations that would be used at trial.

A third trial date was ultimately scheduled for February 2, 2009, and, on that date, both parties were present in court with their attorneys. The transcript of that hearing begins with the circuit court stating:

“[w]e've had a pre-trial on this. We've had extensive meetings. I have heard – I've read the documentation, and I have heard previous statements and arguments on this case. The case involves facts which are as they are.”

The parties' attorneys thereafter indicated they had agreed to a number of stipulations regarding certain documents.

The stipulated trial exhibits tendered by Lori's attorney included: (1) a recent disclosure statement of Lori's financial position; (2) an itemized list of her \$42,839.26 credit card debt, her student loans, and her other miscellaneous debt; (3) a \$30,487.37 promissory note signed by Lori and made out to her grandmother for funds used to pay past-due mortgage payments on the marital home; (4) a \$4,491.38 dollar promissory note signed by Lori and made out to her mother for funds used to pay past-due property taxes on the marital home; (5) a discovery deposition transcript; (6) documents related to the pending sale of the martial home scheduled for February 27, 2009; and (7) a trial

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memorandum containing the arguments of Lori's attorney. David's attorney tendered: (1) his own trial memorandum; (2) a "comprehensive financial statement;" and (3) a list of David's "credit card balances and other debts" totaling \$240,509. The parties then stipulated there were grounds for the divorce, and that the expenses indicated in the stipulated documents would reflect the testimony Lori and David would provide if called before the court.

The parties' attorneys proceeded to argue their respective positions regarding custody, visitation, maintenance, child support, and property division. Lori asserted she should receive sole custody of the children, child support, maintenance, and assistance with day-care expenses. She also requested a 70/30 split of the proceeds of the sale of the marital home, the most substantial marital asset. Lori further contended the payment of the loans to her mother and grandmother should be taken out of David's share of the home sale proceeds. Lori argued it was David's failure to pay mortgage and property tax expenses - contrary to prior court orders - that compelled her to obtain those loans in order to avoid foreclosure. Finally, Lori suggested each party pay the debts incurred in their own name, and that David contribute to the payment of her attorney fees.

Lori's arguments were supported by evidence that she would soon be completing a nursing degree program and hoped to be employed as a nurse shortly after the divorce was completed. Additionally, she argued the deposition testimony and other evidence established that David had sizeable non-marital personal and business assets. While there was evidence David's reported income from his dental practice had declined significantly since the divorce proceeding began, Lori asserted this decline was due to an attempt by David to avoid paying any child support or maintenance. Thus, she contended the circuit court should award \$400-per-week in child support

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based upon an imputed gross income of \$104,000-per-year. This amount was the approximate average of David's reported income in the three years proceeding the filing of the divorce proceeding. Similarly, Lori contended the significant credit card debt David had accumulated was an attempt to sabotage his apparent financial position before the court and he should, therefore, be responsible for paying that debt.

In turn, David asked for joint custody of the children. Furthermore, he asserted the evidence supported his argument that the decline in his income resulted from his frequent appearances in court to respond to Lori's many emergency motions and petitions, increased competition from other dentists, and an imbalance between his rising costs and decreases in payments from his clients' insurance companies. David argued that, if his income was to be imputed at all, it should be imputed to be \$65,000-per-year. This amount represented the gross profit he made from his dental practice in 2006, the year before he became involved in this divorce proceeding.

At the conclusion of the hearing, the circuit court made an oral ruling. The court dissolved the marriage and awarded Lori sole custody of the children. The court also found David should pay Lori \$400-per-week in child support, based upon an imputed net income of \$74,000-per-year. He would also be specifically responsible for an increasing percentage of Lori's child-care expenses, beginning at 20% and growing to 50% over the course of a few months. In support of these findings, the court rejected David's testimony regarding his income. Specifically, the court stated:

"The clear inferences are that either purposefully, and I don't think it was purposefully as much as the fact that he couldn't deal with the divorce and let his practice go to ruin. But, obviously, based upon what he was making two or three years ago, one would expect that he

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would get back to that level.”

With respect to the sale of the parties’ home, the sale price was \$550,000 and it was anticipated the parties would receive between \$200,000 and \$250,000 in proceeds after paying off the mortgage and other costs. The court held Lori should receive 70% of these proceeds and David should receive 30%. However, David’s share would be reduced by an amount necessary to repay the loans to Lori’s mother and grandmother. It would also be reduced in order to pay a portion of Lori’s attorney fees. The parties would each be responsible for their own debts. The court specifically stated that these findings were made in light of its decision to not grant Lori maintenance. The issue of maintenance was reserved for a period of 10 years, however, to be revisited if David’s income ever exceeded \$100,000-per-year. The circuit court then continued the matter to February 19, 2009, at which time it would enter a written judgment. The parties were to work together to divide any items of household personal property before that date, with that division to be reflected in the final written judgment.

Thereafter, continuances were entered on both February 19 and February 24, 2009, until the matter came before the circuit court for the entry of the written judgment on February 26, 2009. At that time, David was not present in court. However, his mother appeared and she indicated David was out of town and a number of emergency motions had been recently left at his home and office. These motions included: (1) motions filed by Lori’s attorneys seeking consent judgments for their fees; (2) a motion filed by Lori seeking to compel David to appear at the real estate closing scheduled for the following day, or alternatively seeking either a judge’s deed or power of attorney to ensure that the closing would go forward if David did not attend; (3) a petition for fees filed by David’s

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attorney; and (4) a petition to withdraw filed by David's attorney. Attached to the petition to withdraw was a letter David faxed to his attorney on February 21, 2009, and which David's attorney asserted was received on February 23, 2009. In the letter, David stated: "I am terminating your services as my attorney."

In light of these developments, the circuit court entered a number of orders. These orders included: (1) a final written judgement, one generally in line with the circuit court's oral ruling at the prior trial date; (2) consent judgements as to Lori's attorney fees; (3) an order compelling David to attend the scheduled real estate closing; (4) a judge's deed and a power of attorney authorizing Lori to consummate the sale of the marital home if David did not appear at the closing; (5) an order allowing David's attorney to withdraw; and (6) an order scheduling a future hearing on the fee petition of David's attorney and granting David time to respond to that petition. The court also ordered David's proceeds from the sale of the marital home should be held in escrow pending further proceedings.

David did not attend the real estate closing, and Lori completed the sale pursuant to the authority granted by the circuit court. David, thereafter, obtained new counsel and filed responses to the fee petition of his former counsel. He also filed a motion asking the circuit court to reconsider: (1) its award of sole legal custody to Lori; (2) its imputation of his income for calculating his child-support obligations; and (3) its "grossly disproportionate" distribution of the parties' assets and liabilities.

Following a hearing, the circuit court granted the fee petition, entered judgment on that petition, and granted in part and denied in part David's motion to reconsider. The circuit court

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generally affirmed its prior judgment, with the following modifications: (1) child support would be reduced to \$300-per-week; (2) maintenance, which had been reserved, was now permanently barred; and (3) David would no longer be required to pay any of Lori's attorney fees, and that portion of David's proceeds from the sale of the home which had originally been set aside to pay those attorney fees, would instead be disbursed to David's former attorney in order to satisfy the judgment entered on the fee petition. David has now appealed.

II. Analysis

On appeal, David challenges: (1) the circuit court's determination of his child-support obligations; (2) its inequitable distribution of the parties' assets and liabilities; (3) the court's award of attorney and other fees; and (4) its decision to enter final judgment at a hearing at which David was neither present nor represented by counsel. Lori never filed an appearance in this court, nor did she file an appellee's brief. In a prior order we agreed to take this appeal on David's brief only, and we now consider his arguments pursuant to *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (a reviewing court should decide the merits of an appeal where the record and the claimed errors are such that a decision can be made easily without the aid of an appellee's brief).

A. Child Support and Child-Care Expenses

We first address David's contention that the circuit court erred by improperly imputing the amount of his income and by requiring him to pay an increasing percentage of Lori's child-care expenses.

1. Child Support

Our resolution of these issues is guided by the provisions of the Illinois Marriage and Dissolution of Marriage Act (Act). 750 ILCS 5/101, *et seq.* (West 2008). Section 505 of the Act allows the court in a dissolution proceeding to order a parent with a duty of support to “pay an amount reasonable and necessary” for the support of that parent's children. 750 ILCS 5/505(a) (West 2008). The minimum statutory amount of support required from a supporting parent with two children is 28% of net income. 750 ILCS 5/505(a)(1) (West 2008). Section 505(a)(3) of the Act defines net income as “the total of all income from all sources,” less certain statutory deductions including taxes and health insurance. 750 ILCS 5/505 (a)(3) (West 2008).

Nevertheless, the circuit court is permitted to deviate from these statutory guidelines where it “makes a finding that application of the guidelines would be inappropriate, after considering the best interests of the child ***.” 750 ILCS 5/505 (a)(2) (West 2008). This determination should be made “in light of evidence including but not limited to one or more of the following relevant factors:

- (a) the financial resources and needs of the child;
- (b) the financial resources and needs of the custodial parent;
- (c) the standard of living the child would have enjoyed had the marriage not been dissolved;
- (d) the physical and emotional condition of the child, and his educational needs; and
- (e) the financial resources and needs of the non-custodial parent.” 750 ILCS 5/505(a)(2) (West 2008).

Furthermore, “[i]f the net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case.” 750

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ILCS 5/505 (a)(5) (West 2008). As such, courts may both look to past earnings to determine an appropriate income level (*In re Marriage of Hubbs*, 363 Ill. App. 3d 696, 706 (2006)) and compel a party to pay child support at an imputed income level commensurate with their earning potential (*In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009)). “The findings of the 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 Breitenfeldt*, 362 Ill. App. 3d 668, 674 (2005). An abuse of discretion occurs where no reasonable person would agree with the position adopted by the circuit court. *In re Marriage of Sanfratello*, 393 Ill. App. 3d 641, 646 (2009).

In this case, the circuit court was presented with evidence that David’s income from his dentistry practice varied in the years before the dissolution order was entered. Between 2003 and 2005, David’s income averaged over \$100,000-per-year. Thereafter, his annual income fell to \$48,989¹ in 2006, \$26,124 in 2007, and \$7,308 in 2008. Lori asserted this reduction in income was a deliberate attempt to sabotage her ability to obtain support or maintenance in the divorce proceeding. She also contended the evidence established that the income reduction did not reflect David’s true financial position, because he had substantial non-marital personal and business assets. In turn, David testified in his deposition that the reduction in income was simply the result of a poor economy, increased competition and costs, and reduced insurance payments.

In light of this evidence, the circuit court initially ordered David to pay \$400-per-week in

¹ The parties variously claim David’s 2006 income to have been \$48,989 or approximately \$65,000. It appears this discrepancy is based upon whether the parties focused on David’s gross profit from his dental practice or the “adjusted gross income” reported on his tax return. While we refer to the latter amount here, in either case the record reflects a precipitous decline in David’s income beginning in 2006.

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child support. The circuit court based this support amount on an imputed *net* income of \$74,000-per-year, which the court described as “a lot less than he has made in more years and more consistent with what I am seeing.” Moreover, the court noted, this amount of support was supported by the “clear inferences” David’s income had been reduced either purposefully or because “he couldn’t deal with the divorce and let his practice go to ruin.”

Following argument on the motion to reconsider, the court agreed with David that the initial support amount was too high because it reflected an imputed *gross* annual income of over \$100,000, a level near what he earned in the highest-grossing years for which records were available. The record also reflects the circuit court reconsidered a number of the factors outlined in section 5/505(a)(2) of the Act. The court noted the fact that Lori was still not employed and the children, who had no independent financial resources, were accustomed to a certain standard of living. With respect to David’s earnings, the circuit court specifically found David “purposefully reduced his earnings in this case. I’ve – repeatedly I’ve seen that in this case.” It also found that determining his current income for support purposes was difficult in light of that purposeful reduction. Ultimately, the circuit court reduced David’s support obligation to \$300-per-week.

We see no abuse of discretion in this decision. As noted above, section 5/505(a)(2) of the Act provides the circuit court with authority to deviate from the statutory guidelines and section 5/505(a)(5) allows it to set child support at a reasonable level where net income cannot accurately be determined. The Act’s provisions therefore allow the court to impute income to a non-custodial parent where that parent is voluntarily unemployed, attempting to evade a support obligation, or has unreasonably failed to take advantage of an employment opportunity. *In re Gosney*, 394 Ill. App.

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3d at 1077.

Here, the circuit court did not find David's testimony about his reduction in income to be credible and, instead, specifically found the reduction was the result of David's purposeful actions. It therefore determined that his income would be imputed at a level which could sustain \$300-per-week in child-support payments. In light of the truly dramatic decrease in David's income, it cannot be said this determination was an abuse of discretion, especially considering the circuit court was in the best position to review the evidence and to weigh David's credibility. *In re Marriage of Bates*, 212 Ill. 2d 489, 515 (2004).

2. Child Care Expenses

In another argument related to child support, David asserts the circuit court improperly ordered him to pay a share of Lori's child-care expenses beginning at 20% but quickly rising to 50%. The circuit court's rationale for this arrangement was, while David had some immediate debt problems to work through, it was assumed his income would increase over time. David asserts this "automatic escalation" was improper because the Act "is 'geared towards a present ability to pay support, and does not suggest in its terms that possible future financial resources of a party may also be taken into account.'" *In re Marriage of Moore*, 117 Ill. App. 3d 206, 209 (1983), quoting *Coons v. Wilder*, 93 Ill. App. 3d 127, 134 (1981).

We disagree. David's overall child-support obligation was ultimately based upon the circuit court's proper imputation of an income level commensurate with his earning potential, in light of his past earnings and the purposeful reduction in his income. Similarly, the circuit court's determination of David's ability to pay for child-care expenses was not based upon wild speculation

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about his future earning potential or earnings. It was, instead, based upon the circuit court's determination that David's income would return to a level more representative of his actual earning potential.

The circuit court specifically stated, after considering David's earning potential, and "based upon what he was making two or three years ago, one would expect that he would get back to that level." Thus, rather than simply speculate about David's future income and steadily raise his obligation to pay for child-care expenses in conformity with such speculation, the circuit court actually provided David with extra time before he would begin paying for child-care expenses at the level commensurate with his properly imputed income. We find no abuse of discretion in this decision.

B. Marital Assets and Liabilities

We next address David's challenge to the circuit court's division of the parties' marital assets and liabilities. Specifically, David contends the circuit court improperly: (1) awarded Lori 70% of the proceeds from the marital home; (2) ordered David to pay a number of liabilities out of his 30% share of those proceeds; (3) failed to account for financial assistance the parties received from David's mother for the purchase of the marital home; (4) required David to assume the majority of the parties' other debt; (5) failed to ensure David received the personal property awarded to him in the dissolution judgment; and (6) failed to account for a coin collection David claimed he never retrieved from the marital home. While we address each of these arguments in turn, we first set out the general legal principles applicable to all of these issues.

Section 503(d) of the Act provides that, in a proceeding for dissolution of marriage, the

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circuit court “shall divide the marital property without regard to marital misconduct in just proportions ***.” 750 ILCS 5/503(d) (West 2008). In determining an appropriate division, the court should consider a number of statutory factors, including:

- “(1) the contribution of each party to the acquisition, preservation, or increase or decrease in value of the marital or non-marital property, including (I) any such decrease attributable to a payment deemed to have been an advance from the parties' marital estate under subsection (c-1)(2) of Section 501 and (ii) the contribution of a spouse as a homemaker or to the family unit;
- (2) the dissipation by each party of the marital or non-marital property;
- (3) the value of the property assigned to each spouse;
- (4) the duration of the marriage;
- (5) the relevant economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home, or the right to live therein for reasonable periods, to the spouse having custody of the children;
- (6) any obligations and rights arising from a prior marriage of either party;
- (7) any antenuptial agreement of the parties;
- (8) the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties;
- (9) the custodial provisions for any children;
- (10) whether the apportionment is in lieu of or in addition to maintenance;

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(11) the reasonable opportunity of each spouse for future acquisition of capital assets and income; and

(12) the tax consequences of the property division upon the respective economic circumstances of the parties.” 750 ILCS 5/503(d) (West 2008).

A circuit court’s distribution of marital property lies within its sound discretion and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 135 (2008).

1. Proceeds from Sale of the Marital Home

In the proceedings below, both parties recognized the marital home as the primary marital asset. David argues it was improper to award Lori 70% of the proceeds of the sale of that asset.

As noted above, the circuit court is to consider a number of statutory factors in dividing marital property, including “whether the apportionment is in lieu of or in addition to maintenance ***.” 750 ILCS 5/503(d)(10) (West 2008). It has long been recognized that the circuit court “has broad discretion in applying the factors enumerated and is authorized to award either property or maintenance, both property and maintenance, or property in lieu of maintenance.” *In re Marriage of Jones*, 187 Ill. App. 3d 206, 223 (1989). An award of property in lieu of maintenance is justified where there is evidence of “financial bickering” between the parties and a failure of the supporting party to timely pay bills. *In re Marriage of Trull*, 254 Ill. App. 3d 34, 39 (1993).

The circuit court below specifically noted it would normally award maintenance in a case such as this, and one of the “major reasons” for its division of the proceeds of the marital home was the fact that it was not in fact awarding any maintenance to Lori. Moreover, there is certainly ample

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evidence in the record of both financial disputes between the parties and David's failure to timely comply with court orders or to pay court-ordered obligations. In light of this evidence, we do not find the trial court's division of the proceeds of the marital home to be an abuse of discretion. Contrary to David's assertions, we believe this division will best serve the Act's objective to "recognize and compensate each party for his or her contributions to the marriage and to place each party in a position to begin anew." *In re Polsky*, 387 Ill. App. 3d at 136.

With respect to this issue we briefly note, while David cites to both *In re Marriage of Calisoff*, 176 Ill. App. 3d 721 (1988), and *In re Marriage of Maczko*, 263 Ill. App. 3d 991 (1992), in support of his argument, these cases are not on point. In each case, this court found the circuit court's award of the vast majority of marital assets to one party to be an abuse of discretion. *In re Calisoff*, 176 Ill. App. 3d at 726; *In re Maczko*, 263 Ill. App. 3d at 997. However, in both cases, the circuit court awarded the majority of the marital assets to one party *in addition* to an award of maintenance. *In re Calisoff*, 176 Ill. App. 3d at 725; *In re Maczko*, 263 Ill. App. 3d at 995. As we have discussed above, here the circuit court properly awarded Lori property *in lieu* of maintenance.

2. Deductions from David's Share of the Sale Proceeds

David next argues that, even if the circuit court's split of the proceeds from the sale of the marital home was proper, it should not have ordered him to pay a number of liabilities out of his 30% share of those proceeds. Specifically, he contends the circuit court erred by reducing his share of the proceeds in order to pay: (1) the promissory notes made out to Lori's mother and grandmother; and (2) the unpaid mortgage payments and property taxes due at the time the marital home was sold.

The record reveals that, prior to the dissolution judgment, David was court-ordered to make

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the mortgage payments on the marital home and otherwise pay for the home's upkeep. Indeed, the initial requirement to do so was entered in an *agreed* order. Despite this obligation, David repeatedly failed to make the required mortgage payments, he was subject to a rule to show cause for this failure, and the home ultimately fell into foreclosure. Lori was then forced to obtain loans from relatives to stave off that foreclosure. Despite Lori's efforts to save the home, David apparently continued to miss mortgage and property tax payments. As such, when the home was sold, the actual proceeds received at closing were reduced in order to account for the unpaid mortgage payments and property taxes then due.

We find the circuit court properly charged these costs to David's share of the home sale proceeds. The Act provides that the circuit court's property division should account for "the contribution of each party to the acquisition, *preservation*, or increase or decrease in value of the marital or non-marital property ***." (Emphasis added.) 750 ILCS 5/503(d)(1) (West 2008). The court should also consider "the dissipation by each party of the marital or non-marital property." 750 ILCS 5/503(d)(2) (West 2008). Courts have long recognized that, the failure to pay mortgage payments, thus endangering or losing the equity contained in a marital home, can constitute dissipation under the Act. *In re Marriage of Aslaksen*, 148 Ill. App. 3d 784, 788-89 (1986), citing *In re Marriage of Siegel*, 123 Ill. App. 3d 710 (1984) and *In re Marriage of Cook*, 117 Ill. App. 3d 844 (1983).

Here, it was David's failure to pay the mortgage and property taxes - in direct violation of court orders to do so - which endangered the primary marital asset. Indeed, but for Lori's actions to save the home from foreclosure, there would be no sale proceeds to distribute among the parties

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at all. On such a record, it was not an abuse of discretion to charge the costs discussed above to David.

3. Other Debts and Obligations

David next contends the circuit court: (1) improperly failed to account for down payment assistance the parties received from David's mother for the purchase of the marital home; and (2) required David to assume the majority of the parties other debts.

Initially, we disagree with David's contention that the circuit court erred by not specifically providing for the repayment of a loan David's mother purportedly provided to the parties for the purchase of the marital home. David correctly notes he both listed this loan in his answers to Lori's interrogatories and referred to it in his deposition testimony. However, David fails to note that, when questioned at his deposition whether or not the purported loan had been repaid, he responded: "I simply don't know at this time because it was a long time ago." Furthermore, at the argument on David's motion to reconsider his counsel referred to the mother's payment and stated: "Was it a gift? Was it a loan? I don't know." This court " 'should not second-guess the trial court's factual findings on the validity of a debt when that finding is based upon the trial court's assessment of the credibility of witnesses and the weight it gives to their testimony * * *.'" *In re Marriage of Awan*, 388 Ill. App. 3d 204, 213 (2009), quoting *In re Marriage of Blazis*, 261 Ill. App. 3d 855, 869 (1994). In light of the record, we find no fault in the circuit court's decision on this issue.

With respect to David's assertion that the circuit court improperly saddled him with the majority of the marital debt, we find the record on appeal does not allow this court to adequately review this issue. It is the appellant's burden to provide the reviewing court with a sufficiently

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complete record to allow for meaningful appellate review. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984). In the absence of a sufficiently complete record, a reviewing court will resolve all insufficiencies apparent therein against the appellant and will presume that the circuit court's ruling had a sufficient legal and factual basis. *Foutch*, 99 Ill. 2d at 391–92.

Here, the circuit court concluded that each party should be responsible for their own debts. As David notes, this decision left Lori responsible for just over \$40,000 in debts while he assumed sole responsibility for debts amounting to well over \$200,000. The circuit court made this decision only after considering the parties' arguments regarding the nature of these debts and a number of stipulations. Those stipulations included trial memorandums from both parties' attorneys, a "comprehensive" statement of David's finances, and an itemized list of David's "credit card balances and other debts." However, none of these documents are contained in the record before this court. Without the benefit of this evidence we have no basis upon which to evaluate this decision, we are in no position to second-guess the circuit court's allocation of these debts, and we must presume this decision had a sufficient legal and factual basis. *Foutch*, 99 Ill. 2d at 391–92. We therefore affirm the circuit courts division of the parties' debts.

4. Personal Property

David next asserts that, although the final dissolution order provided that he was entitled to certain items of household personal property, he never received those items. The final order does indeed award David certain items, calling for them to either be removed from the home prior to its sale or removed by Lori and kept in storage. David's motion to reconsider in the circuit court also alleged he never received "many" of the items which were awarded to him, although the motion does

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not specify which items were not received. This assertion is again raised on appeal.

However, we are uncertain what relief David would have us grant him on appeal. He does not assert there were items of personal property belonging to him that were not awarded in the final judgment, nor does he ask this court to reverse or modify this portion of the circuit court's order. Instead, he seems to be asking for enforcement of the circuit court's award of this personal property. To the extent Lori failed to comply with any portion of that judgment, however, the circuit court was the proper venue for David to seek redress. See *In re Marriage of Ward*, 267 Ill. App. 3d 35, 44 (1994) (noting the circuit has the inherent authority to enforce its own judgments). There is simply no current relief this court can grant David on this issue.

5. Coin Collection

David next contends the division of marital property was inequitable because the circuit court improperly failed to address his assertions regarding a coin collection estimated to be worth over \$20,000.

In his answer to Lori's interrogatories, David listed a coin collection as non-marital property and indicated it had been "taken by Lori Shermulis." Additionally, David testified in his deposition the coins were worth over \$20,000, and had been located in the marital residence when Lori was granted exclusive possession of the home. However, the coins subsequently went missing. David testified Lori denied taking the coins, but he, nevertheless, filed a police report regarding their disappearance.

David did not further explain what, if anything, resulted from any police investigation. Moreover, the record reflects Lori was never questioned about these coins in her deposition, and the

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matter was never addressed on the record in open court either before or after judgment. The only indication the circuit court was ever specifically asked to address this issue is contained in a brief passage contained in David's motion to reconsider. Therein, David asserted the circuit court's division of marital property was disproportionate, in part, because "[n]o consideration was given to Respondent's claim that Petitioner either dissipated or converted his coin collection ***."

Although the circuit court must consider all relevant factors under the Act in determining an appropriate division of property, it need not make specific findings as to each factor. *In re Marriage of Benkendorf*, 252 Ill. App. 3d 429, 433 (1993). Any possible dissipation of marital or non-marital assets is but one factor to be considered. *In re Marriage of Murphy*, 259 Ill. App. 3d 336, 340 (1994); 750 ILCS 5/503(d)(2) (West 2008). Furthermore, even where dissipation is established, the circuit court "is not *required* to charge against a party the amounts found to have been dissipated but *may* do so." (Emphasis in original.) *In re Murphy*, 259 Ill. App. 3d at 340. Finally, it is the function of the circuit court to assess the credibility of the witnesses and determine the weight to be accorded their testimony. *In re Marriage of Murphy*, 359 Ill. App. 3d 289, 302 (2005).

Here, the circuit court was presented with scant evidence of David's assertions regarding his coin collection. Indeed, David himself testified while he blamed Lori for the disappearance of the coins, she denied any responsibility. Even this evidence was never specifically presented to the circuit court for consideration until it was briefly mentioned in David's motion to reconsider. In light of the above authority, we do not find the absence of any specific discussion of David's coin collection in the circuit court's final judgment to be an abuse of discretion.

C. Attorney and Other Fees

David's final substantive argument concerns the attorney and other fees awarded by the circuit court. Although the arguments contained in David's brief are not entirely clear on this issue, he appears to contend the circuit court improperly ordered him to pay for half of the fees awarded to Lori's prior attorney. He also appears to argue that, to the extent that he was ordered to pay any of the fees awarded to Lori's attorneys pursuant to a consent judgment, this requirement violated section 508(d) of the Act. 750 ILCS 5/508(d) (West 2008). Lastly, David contends the circuit court should not have ordered him to pay the fees of the court-appointed child representative.

We first address the issue of Lori's attorney fees, an issue we find to be moot. It is true the initial dissolution judgment did require the parties to pay their own attorney fees, with the exception David was also required to pay for half of the fees awarded to Lori's former counsel. However, the circuit court subsequently granted David's motion to reconsider on this issue. The judgment was therefore revised to reflect each party was to be solely responsible for their own remaining attorney fees. The circuit court further ordered the portion of David's proceeds from the home sale originally earmarked to pay Lori's attorney should instead be disbursed to David's attorney. David's arguments on this point are therefore rendered meritless by our review of the record, and we need not consider them further.

With respect to the fees for the court-appointed child representative, the record reflects David was ordered to pay these fees in March of 2008. However, there is no indication David ever challenged this order in the circuit court. Arguments which are raised for the first time on appeal are waived. *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 414 (2005). Moreover, on appeal, David simply contends ordering him to pay this fee was "inequitable." " 'Bare contentions without

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argument or citation of authority do not merit consideration on appeal.’ ” *Id.*, quoting *Spirit of Excellence, Ltd. v. Intercargo Insurance Co.*, 334 Ill. App. 3d 136, 153 (2002). We, therefore, will not further address this issue.

D. Due Process

David’s final argument on appeal is the circuit court’s judgment should be reversed because he was not present in court or represented by counsel on February 26, 2009, when the written judgment order was entered. He contends he fired his attorney before the matter had been continued to that date and was “out of town” at the time of that hearing. Therefore, he was not properly served with the emergency motions heard on that date, did not receive time to find substitute counsel before the entry of judgement, and was, therefore, deprived of his due process rights. We disagree.

A litigant has a personal duty to follow the progress of their own case, whether they are represented by counsel or not. *Fiallo v. Lee*, 356 Ill. App. 3d 649, 656 (2005), citing in *Smith v. Airoom*, 114 Ill. 2d 209, 226 (1986), and *Gold v. Rader*, 201 Ill. App.3 d 775, 783 (1990). This includes a duty to take action when his counsel does not. *Sakun v. Taffer*, 268 Ill. App. 3d 343, 350 (1994). A litigant should not be permitted to avoid this duty by allowing a “judgment to be entered and then point to a procedural rule governing the time he or she is allowed to file a supplemental appearance after the withdrawal of his attorney to later cause the judgment to be vacated.” *First National Leasing Corp. v. E.T.P. of Chicago, Inc.*, 158 Ill. App. 3d 882, 886 (1987).

In this case, David was present and represented by counsel at the February 2, 2009, trial date where the circuit court issued its initial oral ruling. It is clear from the record that the sale of the parties’ home was already scheduled at the time of this hearing. At the conclusion of that hearing,

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the circuit court continued the matter for the entry of a final written judgment. While David does note the date for entry of final judgment was continued twice, and once after he terminated his former attorney services, he never contends he was unaware a final judgment was to be entered on February 26, 2009. He only contends he was not properly served with the motions also heard on that date, and maintains that position without explaining why or how his mother appeared in court with those same motions in hand.

Even if David did not have knowledge of the exact date final judgment was to be entered, he certainly was aware that both a hearing for that purpose and the sale of the marital home were imminent. Despite this knowledge, he simply fired his attorney and went “out of town.” David did not participate in the sale of the home, and took no further action in this case until he hired new counsel and filed a motion to reconsider challenging the written judgment and the distribution of the proceeds of the sale of the martial home.

We find that, having heard the circuit court’s oral ruling at the February 2, 2009, trial date, David simply ignored these proceedings until final judgment was entered and the home was sold. While he would now have this court find that these circumstances constitute a due process violation, we decline to do so in light of David’s clear failure to follow the progress of his own case and take any timely action.

III. Conclusion

For the foregoing reasons, the judgment of the circuit court is affirmed.

Affirmed.