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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> MARRIAGE OF)	
)	
ELLIS ECKLAND,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County.
)	
and)	No. 09D5860
)	
SABINA CIMINERO,)	The Honorable
)	Veronica B. Mathein,
Respondent-Appellee.)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Lavin and Justice Epstein concur in the judgment.

Held: We find no error in trial court's award of default judgment of dissolution against petitioner, who failed to comply with discovery; we find no error in the award of maintenance nor in the assessment of and distribution of marital property; we find no error in the trial court's denial of petitioner's posttrial motion. Trial court affirmed.

¶ 1 ORDER

¶ 2 Petitioner Ellis Eckland appeals from the trial court's default judgment for dissolution of his marriage to respondent Sabina Ciminero. Ellis contends that the trial court erred by (1)

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defaulting him, even though he was represented by counsel and was "participating in the litigation"; (2) improperly allocating the marital estate; (3) awarding permanent maintenance to Sabina; and (4) denying Ellis' post-trial motion to vacate the default judgment and the award of property and maintenance. For the following reasons, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The parties were married in 2006. They have no children together. In 2008, Ellis filed a petition for dissolution of marriage. He later caused that motion to be dismissed. He then filed another petition for dissolution of marriage on June 22, 2009. One month later, in July 2009, Sabina filed a counterpetition for dissolution of marriage, in which she asserted she was without financial resources and in need of maintenance from Ellis. The following day, Sabina filed motions for temporary maintenance and interim attorney's fees.

¶ 5 Along with her counterpetition, Sabina also filed her financial disclosure statement. It reflected that she had expenses, including debt service, of \$8,845 per month, no income, and her only available assets are retirement accounts worth \$44,000. She attested in an attached affidavit that Ellis had substantial income and assets from a variety of business activities, and that he had access to "vast and diverse sums of money". In his response to the petition for temporary maintenance, Ellis denied he was employed.

¶ 6 On September 28, 2009, the trial court held a hearing on Sabina's petition for interim attorney's fees and petition for temporary maintenance. The court granted the motion in a written order, stating:

"This matter coming before the court on Respondent's

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Petition for Interim Attorney's fees and Petition for temporary maintenance, the parties appearing in open court and having given testimony before the Court, the Court hearing argument of counsel, and having considered the evidence and being otherwise fully advised, IT IS HEREBY ORDERED:

(1) Respondent is granted \$4,756.34 in previously incurred attorneys fees and \$20,243.66 in prospective attorney fees * * *.

(2) Respondent is granted \$10,000 in prospective expert fees * * *.

(3) Respondent is granted the sum of \$8,500 as and for temporary maintenance. Petitioner shall pay said sum directly to Respondent on the first (1st) day of each month until further order of Court. Payments to commence October 1, 2009.

(4) The parties are ordered to close their joint account with Bank of American and shall equally divide the present balance contained therein.

(5) Effective immediately, Petitioner shall be solely responsible for all automatic draft payments for his benefit. * * *

(6) Respondent's motion to compel discovery is set for hearing * * *."

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Although the court order from this hearing states that the court heard the parties testify and heard arguments from the attorneys, Ellis has not provided this court with a transcript of this hearing, nor with a bystanders' report.

¶ 7 In July 2009, Sabina issued subpoenas for Ellis' financial accounts, ownership interests, investments, leases, and debt records from various entities. Many of these financial records are included in the record on appeal.

¶ 8 Sabina also served discovery requests on Ellis. In September 2009, prior to the temporary maintenance hearing, Sabina filed a motion to compel discovery compliance, alleging that Ellis had provided incomplete and "fractional" responses to her July 2009 production notice and interrogatories. She also alleged:

"5. ELLIS is in control of the majority of the marital estate and information pertaining to the marital estate and is well-able to fully and adequately respond to SABINA's discovery requests."

On October 21, 2009, the parties entered into an agreed order, wherein the court stated that Ellis' counsel represented she was "in possession of documents which are responsive to Respondent's discovery requests" but needed time to photocopy said documents prior to tendering them to respondent's counsel. The court gave Ellis 5 days within which to tender "all documents which are responsive to Respondent's discovery". It set a hearing on respondent's motion to compel discovery for November 4.

¶ 9 On November 4, 2009, the court entered an order giving Ellis seven days to complete his discovery responses or face a \$100 per day fine, and also warning Ellis that he may face

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discovery sanctions, including the barring of testimony, striking of pleadings, and fees. The order reads:

"This matter coming before the Court for hearing on Respondent's motion to compel discovery, counsel for the parties appearing, the court hearing argument of counsel and the court being otherwise fully advised on the premises, IT IS HEREBY ORDERED:

(1) Petitioner shall comply with all outstanding discovery as per Respondent's 214 request for documents within 7 days. Additionally, petitioner shall file complete responses to Respondent's interrogatories within 7 days. A \$100 fine against Petitioner shall be assessed per day, for each day that Petitioner fails to comply with the terms of this paragraph.

(2) This matter is set for status on Rule 219 sanctions against Petitioner on 12/17/09 * * * , wherein the Court will consider further sanctions against Petitioner, including but not limited to barring of Petitioner's testimony, assessment of attorney's fees, striking of pleadings, *et cetera* if he fails to comply with this order."

Although the court order from this hearing states that the court heard arguments from the attorneys, Ellis has not provided this court with a transcript of this hearing, nor with a bystander's

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report.

¶ 10 On December 17, 2009, the parties entered an agreed order continuing the sanctions hearing to January 19, 2010, and later continued it to February 19, 2010.

¶ 11 During this time, Sabina continued to issue subpoenas on more financial entities seeking information about Ellis' financial interests.

¶ 12 On January 11, 2010, Sabina filed a motion to compel Ellis to file the parties' 2008 joint tax return from which a refund would be available. The next week, the court issued an order giving Ellis 21 days to respond to the tax return motion, as well as 21 days to produce documents from seven specific financial entities and a copy of his 2007 tax return, all in accordance with Sabina's document requests. Again, although the court order specifies that the court heard arguments from counsel at the hearing that day, Ellis has failed to provide either transcripts from the hearing or a bystanders' report.

¶ 13 On February 19, 2010, the court entered an order reflecting that Ellis' counsel failed to appear for the status on Ellis' discovery compliance, on Sabina's motion to compel reissuance of 2007 tax refund, and on Sabina's motion to compel filing of joint 2008 tax return. The court ordered that, if Ellis did not comply with discovery by the following day, he would be fined \$100 per day until he complied with discovery. Ellis has failed to provide a transcript or a bystanders' report for this hearing.

¶ 14 On March 3, 2010, Sabina filed a petition for rule to show cause regarding Ellis' failure to pay the court-ordered temporary maintenance. On March 11, 2010, the court ordered Ellis to appear to show cause why he should not be held in contempt of court for failure to pay monthly

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maintenance to Sabina, as had been ordered on September 28, 2009. On March 25, 2010, Sabina filed a second interim fee petition, as well as a motion to compel filing of 2008 tax return, notifying the court that Ellis had still not filed the 2008 tax return.

¶ 15 On March 31, 2010, the court entered an order in which it found Ellis had been a trader since 2004, but was not otherwise employed. It also found a commodities account ("the Penson account") had a balance of \$840,000; that Ellis had failed to show an inability to pay the court-ordered temporary maintenance; and that Ellis willfully failed to pay. The court found Ellis in civil contempt of court:

"for his failure to pay temporary maintenance to Respondent as ordered by this court on September 28, 2009 and further finds that his failure to comply with said order is willful, wanton and without compelling justification."

To purge his contempt of court, the court ordered Ellis to pay the March and April maintenance within 48 hours. The order also reflected that, by agreement of the parties, Ellis would arrange for the 2007 tax refund to be reissued, and would file the 2008 and 2009 amended tax returns within 30 days. This order specifically states that both parties and their attorneys were in court for this hearing, that the court heard argument from the attorneys, and the court heard testimony from Ellis.

¶ 16 On August 13, 2010, Sabina filed a "motion to compel discovery compliance and for sanctions for failure to comply with discovery pursuant to Illinois Supreme Court Rule 219." Through this motion, Sabina alleged that Ellis' discovery production was "inadequate and

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fractional, at best." She specified that she was aware Ellis had an interest in and/or was a beneficiary of a trust and, through subpoenaed documents from PNC Bank, had learned that Ellis had received funds from the trust in July 2010. Through counsel, she had requested Ellis to tender copies of all documents relative to this trust pursuant to discovery rules. Ellis failed to do so. She requested the following relief against Ellis:

"A. That ELLIS be ordered to produce all documents relating to the Eckland Revocable Family Trust, including but not limited to production of the underlying trust document which established the Eckland Family Revocable Trust.

B. That the Court award to Sabina reasonable attorneys' fees and costs incurred by her in bringing this Motion for Sanctions for failure to comply with discovery pursuant to Supreme Court Rule 219.

C. That further proceedings on all pleadings and motions filed by ELLIS be stayed until such time as ELLIS fully complies with SABINA's discovery requests.

D. That ELLIS be barred from testifying concerning all financial matters related to this case.

E. That ELLIS be fined the amount of \$500 per day until he fully complies with SABINA's discovery requests.

F. That the Court enter such other sanctions against ELLIS

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as may be appropriate pursuant to Supreme Court Rule 219."

¶ 17 In August 2010, Ellis filed motions with the court to terminate, modify, or abate the required maintenance and to require Sabina to seek employment. In these motions, Ellis alleged he faced an emergency situation in that the "natural gas futures market had a sudden unexpected catastrophic decline in value" and so his Pension account (the account upon which the court based its temporary maintenance order) now had a negative balance. He alleged he had "lost all his assets." On August 31, 2010, the court issued an order finding that Ellis' emergency motion was not an emergency. There is no transcript of any hearing in this regard nor a bystander's report provided in the record on appeal.

¶ 18 In September 2010, Ellis retained substitute counsel.

¶ 19 Meanwhile, on June 14, 2010, Sabina filed an emergency petition for rule to show cause regarding Ellis' failure to pay the June 2010 maintenance. The rule was issued on July 27, 2010, noting that Ellis counsel appeared in court, but Ellis did not. Then, on September 14, 2010, Ellis was found in indirect contempt of court for failing to pay the court-ordered temporary maintenance for the months of June 2010, August 2010, and September 2010. The order reflects that Ellis was not present in court. Counsel for Ellis was present. The court order states:

"Ellis Eckland shall purge his contempt of this court by paying the sum of \$25,5000 directly to Sabina Ciminero within 21 days. Ellis Eckland is ordered to appear before this court on October 5, 2010 at 10:45 a.m. with the funds to purge his contempt. If Ellis Eckland fails to appear on Oct. 5, 2010, the

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court will issue a body attachment against him. If Ellis Eckland purges his contempt before Oct. 5, 2010, this court will waive his appearance on that date and will purge his contempt."

¶ 20 Ellis failed to appear before the court on October 5, 2010, and failed to purge his contempt by paying the required sums. The court entered three orders that day. The first stated that Ellis failed to appear as ordered and failed to purge his contempt. The second was a body attachment for Ellis. The third granted Sabina's motion to compel discovery compliance, including providing documents relating to and checks and/or wire transfers from two named trusts, stating:

"This matter coming before the Court for hearing on Respondent's Motion to Compel Discovery filed on August 13, 2010; Counsel for Respondent appearing in open court, the Respondent appearing in open court in her own proper person; Petitioner's counsel appearing in open court and the petitioner failing to appear; the Court having heard argument of counsel and being otherwise fully advised; IT IS HEREBY ORDERED:

1. Respondent's Motion to Compel Discovery filed 8/13/10 is granted. Petitioner shall tender the following documents to Respondent within seven (7) days:

a) All documents relative to the Eckland Revocable Family Trust and the John and Susan Eckland Revocable Trust

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including, but not limited to, the trusts document which created and/or established the aforementioned trusts

b) Copies of all checks and/or wire transfers from the aforementioned trusts to Ellis Eckland and/or for the benefit of Ellis Eckland from 1/1/2006-present."

Again, although the court order reflects that the court heard arguments from counsel during this hearing, Ellis has failed to provide this court with a transcript of the proceeding or with a bystander's report.

¶ 21 Thereafter, Sabina filed a motion with the court requesting that the \$15,847 from the 2007 tax refund, which was being held in a client trust account, be released to her in its entirety. She alleged that Ellis had only paid one month of the required maintenance between June 2010 and October 2010, and had not paid the \$25,500 required to purge his contempt. She further alleged that Ellis was now employed with UBS Financial in London, earning in excess of \$15,000 per month. On November 4, 2010, the court ordered the refund allocated to Sabina, noting that it was to be considered an advance distribution to Sabina of her share of the marital estate. In its written order, the court noted that Sabina and her counsel, as well as counsel for Ellis appeared for the hearing. Ellis "failed to appear in court" and failed to file a response to the motion to allocate the 2007 state income tax refund. It also noted that the court "heard argument of counsel and considered the testimony and evidence." Nonetheless, Ellis has failed to provide this court with a transcript of the hearing or a bystander's report.

¶ 22 In November 2010, Ellis filed a motion to modify the temporary maintenance due to a

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change in financial status. In the motion, he alleged that, while he was currently employed in London, his "take home" pay would soon be reduced from \$9000 per month to \$7400 per month, because he would soon have to begin paying the national health tax. He also alleged that, while the Penson commodities account previously had a value of \$4,000,000 when the temporary maintenance order was first entered, due to the fluctuating nature of natural gas prices, the account was now worth nothing. Ellis asked the court to modify the temporary maintenance award or to cancel it altogether. Sabina filed a motion to dismiss Ellis' motion.

¶ 23 Also in November, Sabina filed a petition for a temporary restraining order and preliminary injunction, alleging that, when Ellis filed the amended 2007 and 2009 tax returns, he would receive \$79,554 in tax refunds. She requested the court to enjoin Ellis from utilizing those funds. In December 2010, the court granted Sabina's injunction motion, ordering that the tax refunds be held in escrow in Sabina's attorney's client trust account. The court noted that Ellis failed to appear at the hearing. Again, although the court order specifically states that the court considered testimony at the hearing and the argument of counsel, Ellis has failed to provide us with a transcript of the hearing or a bystander's report.

¶ 24 In January 2011, Sabina filed another petition for rule to show cause, alleging that Ellis had not paid three more months of temporary maintenance, had failed to produce the trust account documents, and had still not filed the amended tax returns for 2007 and 2009.

¶ 25 In April 2011, Sabina filed a motion for default judgment, which motion is at issue here, in which she asked the court for a default judgment on her counter-petition for dissolution of marriage. In her motion, she alleged that Ellis' failure to comply with discovery had been "on-

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going" and she set forth the various court orders with which Ellis had not complied, including discovery orders, orders for temporary maintenance, and orders to file the 2007 and 2009 amended tax returns. She set forth the specific contempt orders against Ellis and claimed his non-compliance with court orders was ongoing.

¶ 26 The parties entered into an agreed order giving Ellis 14 days to respond to the motion for default judgment and setting a hearing date. Ellis did not file a response. On May 4, 2011, following a hearing on the motion which Ellis did not attend, the court granted the motion for default judgment. The record on appeal includes the transcript for this hearing.

¶ 27 Sabina and counsels for both Sabina and Ellis appeared at the hearing. Ellis' counsel suggested the case be bifurcated, with the court granting the dissolution and the "money issues" being dealt with at a later date. The trial court denied this request. The court ordered a prove-up hearing to proceed.

¶ 28 At the hearing, Sabina testified about the marriage, explained that the parties had been separated for over two years, and that the marriage was irretrievably broken. She testified that Ellis was in the business of trading in 2008. He filed for divorce in 2008, but later dismissed the petition, saying he was coming back to her. He then re-filed for divorce. Sabina testified that Ellis had transferred large sums of money from his Pension commodities account to a company called Alaron, and also sent sums to himself. She testified that, although she had hired various forensic accountants to find the money, \$18,504,957 had disappeared. She asked the court to award her 50% of this sum.

¶ 29 Sabina also testified regarding the \$93,500 in temporary maintenance arrearage. She

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testified that she was unemployed, but was seeking employment. She testified that she had done some freelance projects.

¶ 30 Sabina also testified regarding property owned by Ellis, including a hotel property in Canada, as well as physical gold. She testified that, prior to this case, she liquidated \$65,000 of her IRA to give to Ellis, who told her he needed it for legal expenses related to his business. In combination with this \$65,000, she lost another \$35,607.09 to taxes and penalties as a result of withdrawing this money, for a total of approximately \$100,000.

¶ 31 In granting the motion for default judgment, the court found grounds to exist, ordered the maintenance arrearage paid and continuing maintenance in the same monthly amount, divided the assets equally as Sabina had requested, ordered the reimbursement to Sabina of the IRA money and tax consequences, and required payment of the fees and fines which had been sought. More specifically, the court ordered Ellis to pay \$8,500 monthly to Sabina for permanent maintenance; ordered Ellis to pay the \$93,500 of unpaid maintenance pursuant to the September 28, 2009, court order; awarded each party personal property currently in their individual possession; awarded Sabina: the sum of \$600,000, which represented Sabina's one-half marital interest in the hotel/real estate partnership owned by Ellis; the sum of \$277,500, which represented Sabina's one-half marital interest in physical gold held by Ellis; the sum of \$39,777, which represented Sabina's one-half marital interest in the amended 2009 federal income tax refund and the amended 2007 Illinois state income tax refund; the sum of \$9,252,478.79, which represented Sabina's one-half marital interest in the funds transferred by Ellis out of the Pension account between May 16, 2008 and June 8, 2009; the sum of \$100,607.09, which represented

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reimbursement to Sabina for the liquidation of her IRA accounts used to pay Ellis' previous legal expenses.

¶ 32 The court also awarded various items of marital property to Ellis, including: a 100% interest in the hotel/real estate partnership held by Ellis with a value \$1,200,000; the physical gold in his possession worth \$555,000; and the remaining interest in the Amended 2009 federal income tax return refund and the amended 2007 Illinois state income tax refund, after distribution to Sabina. The court ordered Ellis to pay 100% of all of Sabina's outstanding attorneys fees and costs (\$32,044), and to pay his own attorney's fees. In total, the amount awarded to Sabina was \$10,395,907.63.

¶ 33 On May 6, 2011, Ellis filed an emergency motion for continuance and to vacate default judgment based on equity. In the motion, Ellis disputed Sabina's valuation and existence of his assets; explained that the financial testimony offered by Sabina had been from documents Ellis did not have opportunity to review; explained that funds transferred out of the Penson commodities account were ultimately lost to other poorly performing investments, and that documentation of this had been provided to Sabina. He further denied that he owned property in Canada and denied he had any physical gold. He claimed he was not able to afford the \$8,500 in monthly maintenance, and stated that Sabina was highly qualified to obtain employment and could "easily support herself."

¶ 34 On May 9, 2011, with counsel for both parties present, the court denied Ellis' motion, and entered the memorandum default judgment. Ellis has not provided this court with a transcript from the hearing, nor with a bystander's report.

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¶ 35 On June 3, 2011, Ellis filed a "motion to reconsider default judgment and vacate". With no further explanation, he stated he had been unavailable for the May 4 hearing, and noted that, regardless, he did not need to be there because the May 4 date was originally scheduled for hearing on his petition to reduce temporary maintenance and Sabina's petition for rule to show cause. Through his motion, Ellis argued that the court should have heard the petition to reduce temporary maintenance, that the values of some assets described in the prove-up were exaggerated, and that other assets covered in the judgment were not actually owned by him. Ellis also claimed he had complied with discovery. He claimed the values in the judgment had not been substantiated and that he had records disputing them, that he did not have the assets which were divided by the court, and did not have an income from which he could pay the maintenance order.

¶ 36 Ellis attached many documents to his motion to reconsider, including financial statements, tax returns, and an unsigned document titled "Statement of Ellis Eckland." In that statement, he asserted that Sabina's attorney had submitted false documents, that he had \$10,000,000 when he married Sabina, and that Sabina "contributed to the destruction" of these assets through "highly erratic behavior" during the marriage. Ellis claimed that a forensic accountant could verify that he had no money if given the time to do so, but "[t]he fact that the court is unwilling to provide any time to do so is a clear sign as to the intentions behind this 'default judgment' ".

¶ 37 In Sabina's response, she denied the material allegations and stated that most of them had previously been ruled upon at the May 6, 2011, hearing on Ellis' emergency motion to vacate.

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On July 21, 2011, after hearing arguments on the motion, the court denied the motion. Again, Ellis has failed to provide this reviewing court with a transcript of that hearing or a bystander's report.

¶ 38 Ellis appeals.

¶ 39 II. ANALYSIS

¶ 40 A. The Default Judgment

¶ 41 First, Ellis contends that the trial court abused its discretion by granting the default judgment against him. Specifically, Ellis argues that the court improperly defaulted him, where he was "represented by counsel and was participating in the litigation." We disagree.

¶ 42 Illinois Supreme Court Rule 219(c) authorizes a trial court to impose sanctions on a party who unreasonably fails to comply with the court's discovery rules or orders. *Shimanovsky v. General Motors Corp.*, 181 Ill. 2d 112, 120 (1998). "The purpose of discovery sanctions is to coerce recalcitrant parties to cooperate in accomplishing the required discovery, not to punish." *In re Marriage of Lai*, 253 Ill. App. 3d 111, 116 (1993). "[A] sanction causing a default judgment is the most severe sanction a court can impose on a defendant and is proper only in those cases where actions of a party showed deliberate, contumacious, or unwarranted disregard of a court's authority." *In re Lai*, 253 Ill. App. 3d at 116.

¶ 43 An appellate court will not overturn a trial court's imposition of sanctions for noncompliance with discovery rules and court orders absent an abuse of discretion. *In re Lai*, 253 Ill. App. 3d at 116. An abuse of discretion occurs where the trial court's ruling is "arbitrary, fanciful, or unreasonable", or where no reasonable person would take the view adopted by the

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trial court. *People v. Hall*, 195 Ill. 2d 1, 20 (2000).

¶ 44 Here, Ellis has failed to provide this court with an adequate record to review his claims of error. See *Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009) (the appellant has the burden of presenting the court with a sufficiently complete record to support a claim of error). As noted above, the trial court held numerous hearings throughout the course of this case, entering orders after said hearings, but the facts presented, the arguments heard, and the legal bases for the court's rulings on the issues it decided are not included in the record on appeal. Instead, we have been provided with only the common law record plus very limited testimony from among the many hearings that were held in the trial court in this cause. Thus, we do not know what evidence, if any, was presented, or what legal arguments were made. From nearly every hearing held, Ellis has failed to provide transcripts, and has failed to provide an acceptable substitute, such as a bystander's report. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984); see also *In re Marriage of Rogers*, 213 Ill. 2d 129, 140 n.2 (2004). As the appellant, it was Ellis' responsibility to provide a complete record on appeal.¹ *Foutch*, 99 Ill. 2d at 391-92. In the

¹On appeal, Ellis acknowledges the lack of trial transcripts in the record, stating:

"Counsel on appeal did check several times with the court reporting office at the Cook County Circuit Court and was assured that the only hearings in this case that were recorded in any fashion were the March 31, 2010, and May 4, 2011, hearings, and thus they are the only proceedings for which the transcripts could be made available."

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absence of a complete record, we presume that the trial court's orders conformed to the law and "had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92.

¶ 45 Due to the incomplete nature of the record provided us, we are unable to determine just what the trial court informed Ellis and his counsel. What we can tell from the record before us is that Sabina served a motion to compel discovery compliance regarding her notice to produce interrogatories to Ellis on September 16, 2009. Through that motion, she alleged incomplete responses to her July 2009 discovery requests. The court entered an order on November 4, 2009, granting Ellis seven days in which to comply with discovery, and ordering that, if Ellis failed to comply, he would be subject to a \$100 per day fine until he complied with discovery. The court also warned Ellis:

"(2) This matter is set for status on Rule 219 sanctions against Petitioner on 12/17/09 * * * , wherein the Court will consider further sanctions against Petitioner, including but not limited to barring of Petitioner's testimony, assessment of attorney's fees, striking of pleadings, *et cetera* if he fails to comply with this order."

This warning, however, did not inspire Ellis to comply with discovery. Instead, more time passed and, on February 19, 2010, when Ellis still had not complied, the court imposed the \$100 per day fine about which it had warned Ellis three months previous. Again, there is no transcript

Ellis appears to misunderstand the rules, however, as the rules allow for a bystander's report to be filed in lieu of a transcript. *Foutch*, 99 Ill. 2d at 391-92.

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from this hearing nor bystander's report included in the record on appeal.

¶ 46 In the meantime, through third-party subpoenas served by Sabina on numerous financial institutions, the court was presented with evidence demonstrating Ellis' investment and trading activity.

¶ 47 A few months later, on August 13, 2010, Sabina filed another motion to compel discovery. After an October 5, 2010, hearing from which we have no transcript nor bystander's report, the court granted Sabina's motion to compel discovery.

¶ 48 Ellis was still not compliant with the discovery orders almost a year and a half after he was first ordered by the court to comply with discovery, when Sabina filed the motion for default on April 14, 2011. In her motion, Sabina specifically set forth all of the non-compliance in which Ellis had engaged and the orders that had been entered against him. Then, even with the default motion pending, Ellis did not avail himself of the opportunity to respond in writing to the default motion, to comply with discovery, or to attend the default hearing.

¶ 49 Ellis argues in his brief that:

"The trial court abused its discretion in granting the Motion for Default Judgment without argument, without determining exactly what discovery was still alleged to be incomplete, without questioning the husband's counsel as to the alleged non-compliance, without inquiring as to how the alleged missing discovery might impact on the issues in the case, without exploring less drastic sanctions such as the pending contempt petition for

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failure to comply with the October 5 order, and without making any effort to get discovery and trial accomplished, instead granting a blanket *carte blanche* default."

We disagree. Relying on the limited record before us, we are unable to determine how often or to what extent the trial court discussed further sanctions with Ellis. Where there is an incomplete record, we presume the trial court acted in conformity with the law and ruled properly after considering the motion. *Foutch*, 99 Ill. 2d at 392. What is clear from the record, however, is that Ellis was very specifically warned on November 4, 2009, that his continued noncompliance with discovery could result in sanctions, "including but not limited to barring of [his] testimony, assessment of attorney's fees, striking of pleadings, *et cetera*." Ellis' continued failure to comply with discovery showed a deliberate, contumacious and unwarranted disregard for the court's authority, and the trial court properly exercised its broad discretion in entering the sanctions against him. We resolve all doubts due to the incompleteness of the record against the appellant. *Foutch*, 99 Ill. 2d at 392. As such, we find no abuse of discretion in the trial court's determination that a default judgment was warranted here.

¶ 50 B. The Division of Property

¶ 51 Next, Ellis contends that the trial court abused its discretion in its determination of what constituted the marital estate, as well as in dividing the estate. We disagree.

¶ 52 The Illinois Marriage and Dissolution of Marriage Act provides that, in dividing marital property in a dissolution proceeding, the trial court must consider factors such as the contribution of each party to the acquisition or increase in marital property; the value of property assigned to

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each spouse; the relevant economic circumstances of each spouse; the duration of the marriage; the age, occupation and employability of each of the parties; and the reasonable opportunity of each spouse for future acquisition of capital assets and income. 750 ILCS 5/503(d) (West 2010).

¶ 53 A trial court has broad discretion in dividing marital property in just proportions between the parties. See 750 ILCS 5/503(d) (West 2010); *In re Marriage of Benkendorf*, 252 Ill. App. 3d 429, 433 (1993). An abuse of discretion occurs only when no reasonable person would take the view adopted by the court. *In re Benkendorf*, 252 Ill. App. 3d at 432-33. A reviewing court should examine whether the trial court "acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." *In re Marriage of Aud*, 142 Ill. App. 3d 320, 326 (1986). Although the court is to consider all relevant statutory factors, it is not required to divide the property with mathematical equality. *In re Benkendorf*, 252 Ill. App. 3d at 433; see 750 ILCS 5/503(d) (West 2010). The value of the parties' nonmarital assets is among the things to be considered by the court. *In re Benkendorf*, 252 Ill. App. 3d at 433. The trial court need not make specific findings to support its decision. *In re Marriage of Hart*, 194 Ill. App. 3d 839, 847 (1990).

¶ 54 In the present case, the trial court divided the estate in half, awarding Sabina one-half and Ellis the other half. This property division included the \$18,504,957.58 that Ellis had removed from the Penson account, the \$80,000 tax refund that he was ordered to supply to Sabina but never did, and the Canadian real estate and physical gold to which Sabina testified. That Ellis failed to participate fully in the discovery process may have prejudiced him in the end, as the

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court was left to rely upon the evidence before it, including financial documents Sabina had subpoenaed from various financial institutions showing Ellis' financial records. In addition, Ellis had filed a pre-judgment pleading in which he acknowledged having had \$4,000,000 in the Penson account during the marriage.

¶ 55 Ellis argues that, "[j]udgment for specific relief in the event of default, without taking adequate evidence, should only occur where that specific relief has already been requested in the pleadings or otherwise made known to the subsequently-defaulted party." We are at a loss in reviewing this contention because, as we have stated previously, we are unable to surmise what the court and the parties did or did not make known to one another during this litigation, as the record before us is incomplete. We resolve all doubts due to the incompleteness of the record against the appellant. *Foutch*, 99 Ill. 2d at 392.

¶ 56 Ellis chose not to participate in discovery and chose not to respond to many of Sabina's motions, including the motion for default. In so doing, he did not avail himself of the opportunities presented in which he could have disputed Sabina's presentation of the marital estate. The trial court, then, was left to determine, based on the evidence before it, an equitable distribution of property. We find that the court considered the requisite factors under section 503(d) (750 ILCS 5/503(d) (West 2010)) and the circumstances of the case, and ordered a reasonable distribution of the marital property. *In re Hart*, 194 Ill. App. 3d at 847 ("The touchstone of a proper apportionment is whether it is equitable in nature"). The trial court was not required to make specific findings to support its decision. *In re Hart*, 194 Ill. App. 3d at 847. We find no abuse of discretion in the trial court's assessment of the marital estate and its

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equitable division thereof.

¶ 57 C. The Maintenance Award

¶ 58 Next, Ellis contends that the trial court erred in its award of permanent maintenance to Sabina. He argues that "awarding permanent maintenance of \$8,500 per month to a 37-year old wife with an MBA in a five-year marriage" was an abuse of discretion. We disagree.

¶ 59 A trial court has wide discretion in awarding maintenance, taking into consideration such statutory factors as the parties' income and needs; their present and future earning capacity; and any impairment of that earning capacity due to time devoted to domestic duties or having delayed training or employment due to the marriage. 750 ILCS 5/504(a) (West 2010); see also *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 341 (2001); *In re Marriage of Krane*, 288 Ill. App. 3d 608, 618 (1997). "The Act further provides that the maintenance order is to be for an amount and duration as the court deems just, after considering the following additional factors: the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; the standard of living established during the marriage; the duration of the marriage; the age and the physical and emotional condition of the parties; and the ability of the spouse from whom maintenance is sought to meet his or her own needs while meeting those of the spouse seeking maintenance." *Vendredi v. Vendredi*, 230 Ill. App. 3d 1061, 1066 (1992).

¶ 60 After the court has determined that a maintenance award is appropriate, no one factor is determinative of the amount and duration of the award. *Vendredi*, 230 Ill. App. 3d at 1066. In determining the amount of support where one party's current income is uncertain, the trial court may take into account that party's past earnings. *In re Benkendorf*, 252 Ill. App. 3d at 447. An

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award of maintenance is within the discretion of the trial court and will not be reversed on appeal unless the award constitutes an abuse of discretion or is against the manifest weight of the evidence. *In re Marriage of Minear*, 181 Ill. 2d 552, 561 (1998). An abuse of discretion exists when the lower court "act[s] arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceed[s] the bounds of reason and ignore[s] recognized principles of law so that substantial injustice result[s]." *In re Marriage of Hughes*, 160 Ill. App. 3d 680, 684 (1987).

¶ 61 Here, Sabina testified at the default prove-up hearing that she remained unemployed. She also testified that millions of dollars had moved through various accounts during the marriage, and that millions had been transferred from the Penson account directly to Ellis. For example, Sabina testified that, on May 16, 2008, Ellis transferred \$11,500,000 from the Penson account to a company called Alaron. On May 19, 2008, he transferred \$1,269,957 from the Penson account to Alaron. Also on May 19, 2008, he transferred to himself \$2,200,000, and on May 21, he transferred \$1,000,000 and \$500,000 to himself. On May 22, 2008, he transferred \$2,000,000 to himself, and on December 1, 2008, he transferred \$100,000 to himself. She testified to various other transfers and removals of money, and testified that she hired three sets of forensic accountants to trace the money, all to no avail. She testified that, in total, there was \$18,504,957.58 that the forensic accountants could not trace and about which Ellis had not produced information during discovery.²

² As evidence that the court's maintenance order was not in error, Sabina also urges us to consider various documents received into evidence after the default judgment was entered.

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¶ 62 With all of the above testimony and evidence before it, and with Ellis clearly not participating in the discovery process, the trial court determined that an award of \$8,500 in monthly maintenance was appropriate. We no abuse of discretion in this determination. See *In re Hughes*, 160 Ill. App. 3d at 684 (an abuse of discretion exists when the lower court "act[s] arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceed[s] the bounds of reason and ignore[s] recognized principles of law so that substantial injustice result[s]").

¶ 63 We note that the maintenance award in question is of the same monthly sum as the temporary maintenance awarded to Sabina on September 28, 2009. At that time, the court entered a written order reflecting that, at the maintenance hearing, the court heard testimony from Ellis and reviewed Sabina's financial disclosure statement. Ellis has failed to supply us with either a transcript or a bystander's report of that temporary maintenance hearing. To the extent that a review of that hearing could be helpful to this court in its review of the permanent maintenance award, the incomplete record before us requires us to presume that the court had sufficient evidence upon which to base its order. *Foutch*, 99 Ill. 2d at 391.

These documents include Ellis' 2007 tax returns, showing his income as \$6,697,710, and a 1099B form from Alaron in 2007 for \$6,976,645. Ellis filed these documents as attachments to his "motion to reconsider default judgment and vacate." Because these documents were filed after the trial court had made its maintenance determination, we will not consider them in our review of the maintenance determination.

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¶ 64 Moreover, although we affirm the maintenance award herein, we note that while the judgment provides maintenance on a permanent basis, should there be a substantial change in circumstances—such as an increase in Sabina's earning capacity or a decrease in Ellis' resources, or if Sabina were to marry or to cohabit with another person on a resident, continuing conjugal basis—the maintenance award would be reviewable in court. See 750 ILCS 5/510 (West 2010). Under the circumstances of this case, it was neither unreasonable nor against the manifest weight of the evidence for the court to determine that Sabina should receive \$8,500 per month in permanent maintenance from Ellis.

¶ 65 D. The Post-Trial Motions

¶ 66 Finally, Ellis contends that the trial court abused its discretion when it denied his "motion to reconsider the default judgment and vacate," which motion was brought pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203 (West 2010)). He argues:

"If nothing else, upon presentation of a nearly 300-page Motion to Reconsider Default Judgment and Vacate, with most of it being documentary exhibits, challenging the value and the very existence of the marital estate which had been 'proven' only by the wife's acquiescence in her attorney's oral statements, and the challenging any basis for a maintenance award [*sic*], the court should have done substantial justice by vacating the default."

We disagree.

¶ 67 "The purpose of a motion to vacate is to alert the trial court to errors it has committed and

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to afford an opportunity for their correction." *Regas v. Associated Radiologists, Ltd.*, 230 Ill.

App. 3d 959, 967 (1992). Ellis' motion was made under section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2010)) (motions after judgment in non-jury cases). We review the trial court's decision regarding motions made under this section for an abuse of discretion. *Jacobo v.*

Vandervere, 401 Ill. App. 3d 712, 715 (2010); *Regas*, 230 Ill. App. 3d at 967 (a "section 2-1203 motion invokes the sound discretion of the trial court"); but see *In re Marriage of Kopec*, 106 Ill. App. 3d 1060, 1062 (1982) (in review of the denial of a motion to vacate a default judgment, "the reviewing court need not determine, as a matter of law, that the trial court abused its discretion, but only resolve the question of whether justice has been served."). "In determining whether the trial court abused its discretion, "the question is not whether the reviewing court agrees with the trial court, but whether the trial court acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." ' " *In re Marriage of Wolff*, 355 Ill. App. 3d 403, 409 (2005) (quoting *In re Marriage of Gowdy*, 352 Ill. App. 3d 301, 307 (2004), quoting *In re Aud*, 142 Ill. App. 3d at 326).

¶ 68 Through the motion, Ellis asked the trial court to "reconsider and vacate" the default judgment. Through argument and attached documentation, Ellis claimed that his investment assets were largely lost in the crash of the natural gas market in 2010; that the withdrawals from the Penson account in May 2008 were not as large as Sabina claimed at the default hearing and were simply transfers to other broker accounts which were ultimately lost; that the money paid to himself at that time was largely to cover tax bills; Ellis denied that he owned a hotel property in

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Canada; he denied owning physical gold; and claimed that, although employed, he could not afford the maintenance award of \$8,500 per month.

¶ 69 Here, Ellis asserts that substantial justice warrants that we vacate the default judgment. "Whether substantial justice is being achieved by vacating a judgment or order is not subject to precise definition, but relevant considerations include diligence or the lack thereof, the existence of a meritorious defense, the severity of the penalty resulting from the order or judgment, and the relative hardships on the parties from granting or denying *vacatur*." *Jacobo*, 401 Ill. App. 3d at 715, quoting *Jackson v. Bailey*, 384 Ill. App. 3d 546, 549 (2008). We do not conclude that the trial court abused its discretion in determining that substantial justice did not require the default judgment to be vacated.

¶ 70 The court order denying Ellis' motion states:

"This cause coming on to be heard on motion of Ellis Eckland to reconsider and vacate the Default Judgment entered against Ellis Eckland, all parties having notice and being present through counsel, the court having reviewed the pleading and considered the agreement of counsel and being full advised:

It is Hereby Ordered

1) The motion of Ellis Eckland to reconsider and vacate the default judgment entered against him be and hereby is Denied."

The record on appeal does not include the transcript of nor a bystander's report regarding the hearing that was apparently held on Ellis' section 2-1203 motion. "In the absence of a report of

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the proceeding, a reviewing court must assume the circuit court heard sufficient evidence upon which to base its decision." *Regas*, 230 Ill. App. 3d at 967; *Foutch*, 99 Ill. 2d at 392 (we resolve all doubts due to the incompleteness of the record against the appellant).

¶ 71 From the record on appeal, we cannot say the trial court abused its discretion by denying Ellis' motion, nor that it failed to do substantial justice. To justify setting aside a previous order based on newly discovered evidence, the party presenting the evidence must show, in relevant part, that he could not have produced the evidence earlier through due diligence. *In re Wolff*, 355 Ill. App. 3d at 409 (in context of a section 2-1203 motion to reconsider based on newly discovered evidence, "(1) the party seeking to overturn the order must show due diligence in discovering the evidence; (2) the party must also show that he could not have produced the evidence at the first trial by exercising due diligence; (3) the party must demonstrate that the evidence is so conclusive that it would probably change the trial result; (4) the evidence must be material and relate to the issues; and (5) the evidence cannot be merely cumulative or serve the sole purpose of impeachment.") (quoting *Gersch v. Kelso-Burnett Co.*, 272 Ill. App. 3d 907, 911 (1995)).

¶ 72 Ellis clearly did not meet this burden. The documents he attached to his posttrial motion were, apparently, available to him throughout the litigation. He just chose not to produce them as requested—and then ordered—during the discovery process. He offered no explanation as to why the documents were not provided earlier. Accordingly, the new information provided with the posttrial motion was not properly before the court.

¶ 73 Ellis argues that the trial court could have granted his motion even without the

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attachments, because the motion was consistent with his prior disclosure statement, as well with as his two motions to reduce or terminate temporary maintenance. In his financial disclosure statement, filed previous to the default, Ellis disclosed that he was employed in London at the rate of \$15,300 gross per month, at a net of \$9,180 per month. His living expenses were shown at \$8,271 plus \$4,400 in monthly debt payments. Through his first motion to terminate or modify temporary maintenance, also filed prior to the default, Ellis alleged that, due to a decline in the natural gas futures market, his Penson account was then at a negative balance, and that he had no other assets of significance. Through his second motion to modify maintenance, Ellis alleged that he had liquidated some assets and borrowed additional funds in order to pay temporary maintenance and attorney fees as the court had ordered. He also alleged that his a large part of his Penson account was involuntarily liquidated by the broker, that it rebounded briefly, and then collapsed again in August 2010, at which point the broker seized control and liquidated the account, sending Ellis a bill for \$860,000. He alleged that he did not have the funds to pay the temporary maintenance, either through the Penson account or through his employment at UBS in England.

¶ 74 Again, due to the incomplete nature of the record on appeal, we are unable to ascertain what, if any, import the trial court gave to these previous filings. Where there is no report of proceedings nor bystander's report, we are unable to know if the court discussed these filings with the parties or their attorneys.

Even with these filings in mind, however, we do not conclude that the trial court abused its discretion in determining that substantial justice did not require the default judgment to be

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vacated. The trial court had before it evidence from various third parties regarding Ellis' financial records, it had heard testimony from the parties, and it had heard arguments from counsel. That it chose to believe Sabina's accounting of Ellis' finances, in view of all of the circumstances, did not exceed the bounds of reason such that substantial prejudice resulted. See *In re Wolff*, 355 Ill. App. 3d at 409 (quoting *In re Gowdy*, 352 Ill. App. 3d at 307, quoting *In re Aud*, 142 Ill. App. 3d at 326) ("In determining whether the trial court abused its discretion, "the question is not whether the reviewing court agrees with the trial court, but whether the trial court acted arbitrarily without the employment of conscientious judgment or, in view of all the circumstances, exceeded the bounds of reason and ignored recognized principles of law so that substantial prejudice resulted." " ").

¶ 75

III. CONCLUSION

¶ 76 For all of the aforementioned reasons, the decision of the circuit court of Cook County is affirmed.

¶ 77 Affirmed.