

No. 1-11-1938

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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KAZIMIERZ CHRACA,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	No. 07 D 04733
	)	
ANNA CHRACA,	)	Honorable
	)	Veronica B. Mathein,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Karnezis concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's dismissal of petitioner's petition for a rule to show cause why respondent should not be held in contempt for failing to make certain court-ordered payments was affirmed where respondent did not wilfully refuse to obey the court order and where petitioner failed to make a cohesive argument and provide a complete record on review.

¶ 2 Petitioner, Kazimierz Chraca, appeals the order of the trial court dismissing his petition for a rule to show cause why respondent, Anna Chraca, should not be held in contempt for failing to pay off the home equity line of credit as required of her by the marital settlement agreement incorporated in the judgment of dissolution of marriage. The issue on appeal is whether respondent wilfully

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refused to obey the trial court's order to pay off the line of credit, or whether she had a valid excuse for noncompliance. We hold respondent had a valid excuse for failing to pay off the line of credit and, so affirm the order dismissing petitioner's rule to show cause.

¶ 3 The parties were married on January 14, 1989, and have one child, Pawel, who was born on September 23, 1991. The trial court entered judgment for dissolution of marriage on June 19, 2007, which incorporated a marital settlement agreement providing for the division of the assets and debts of the marriage. The dissolution judgment ordered the parties "to carry out and perform all of the [applicable] terms and provisions" of the marital settlement agreement.

¶ 4 Paragraph number 3 in the marital settlement agreement states:

"3. Each party shall be responsible for his or her own bills, debts and obligations, and each agree to indemnify and hold the other harmless for any debts, claims or expenses incurred by the other, except that [respondent] shall be responsible for the payment of the line of credit (the total open line is \$50,000.00), on the property located at 8233 Rippleridge, Darien, Illinois, she will be responsible for the payment of [the] entire balance remaining on this line at the time of repayment and she will pay it in the following way:

A. The balance to be paid off and the line of credit to be closed not later than a year from the date of dissolution.

B. In case of sale of the house within a year the entire balance of the line of credit must be paid off by [respondent] (and not from proceeds of the house) one day prior to a closing and the line of credit shall be closed."

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¶ 5 On April 22, 2008, petitioner filed a petition for a rule to show cause why respondent should not be held in contempt for failing to make any payments on the home equity line of credit as required by paragraph number 3 of the marital settlement agreement. On October 9, 2009, an agreed settlement order was entered providing respondent immediately would pay petitioner \$9,500 and retire the remaining balance on the loan no later than January 31, 2010.

¶ 6 Respondent subsequently filed for chapter 7 bankruptcy on January 27, 2010. Respondent alleges, and petitioner does not dispute, that she listed a debt in the amount of \$48,492 through Chase Bank, which was the home equity line of credit listed in paragraph number 3 of the marital settlement agreement. Petitioner filed no objections during the bankruptcy proceedings as to the claims made by respondent, including the line of credit. On May 4, 2010, the bankruptcy court entered an order granting respondent a discharge of her pre-petition debts under section 727 of the United States Bankruptcy Code (Bankruptcy Code) (11 U.S.C. §727 (2010)). The order stated: "[m]ost, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed." The order listed common types of debts that are not discharged, including: debts for most taxes; debts that are domestic support obligations and; debts which were not properly listed by the debtor. The order did not state that respondent's obligation to pay off the home equity line of credit was excepted from discharge.

¶ 7 Following the discharge, the trial court entered an agreed order on May 26, 2010, taking the petition for a rule to show cause off call.

¶ 8 In October 2010, petitioner's new counsel re-filed the petition for a rule to show cause why respondent should not be held in contempt for failing to pay off the home equity line of credit to

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Chase Bank. Respondent filed a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619 (West 2010)). Respondent alleged, due to the bankruptcy filing, petitioner must litigate all issues related to the dischargeability of the obligation to pay off the home equity line of credit in the bankruptcy court and that the trial court had no subject-matter jurisdiction over the matters alleged in the petition for a rule to show cause. In his reply to respondent's motion to dismiss, petitioner argued that the trial court has concurrent jurisdiction with the bankruptcy court to determine whether respondent's obligation to pay off the home equity line of credit is dischargeable in bankruptcy. Petitioner further argued that respondent's obligation to pay off the home equity line of credit is not dischargeable in bankruptcy.

¶ 9 The trial court heard oral arguments on February 10, 2011, and denied respondent's motion to dismiss. The record on appeal contains no transcript of the February 10 hearing or an agreed statement of facts. The record does contain a bystander report of the February 10 hearing prepared by respondent's counsel, but it has not been stipulated to or certified by the trial court as required by Illinois Supreme Court Rule 323(c) (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)).

¶ 10 Respondent filed a motion to reconsider on March 10, 2011. The basis of the motion to reconsider was: (1) a "procedural irregularity" occurred during the hearing on her motion to dismiss, wherein the trial court permitted an attorney, who did not represent either party and who had not been duly qualified as an expert, to opine as to the merits of the motion to dismiss; (2) petitioner failed to preserve his objection to the discharge of respondent's obligation to pay off the home equity line of credit by failing to file the appropriate adversary proceeding in the bankruptcy court and; (3) respondent's obligation to pay off the home equity line of credit was discharged in the chapter 7

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bankruptcy and the trial court had no jurisdiction over this issue.

¶ 11 On June 3, 2011, the trial court granted respondent's motion to reconsider, vacated the order of February 10, 2011, and dismissed petitioner's petition for a rule to show cause. The record on appeal contains no transcript of the June 3, 2011, hearing, nor any bystander report or agreed statement of facts.

¶ 12 Petitioner filed this timely appeal from the June 3, 2011, order vacating the February 10, 2011, order and dismissing his petition for a rule to show cause.

¶ 13 Our supreme court has held: "[t]he power to enforce an order to pay money through contempt is limited to cases of wilful refusal to obey the court's order." *In re Marriage of Logston*, 103 Ill. 2d 266, 285 (1984). The failure to make court-ordered payments is *prima facie* evidence of contempt. *In re Marriage of Admire*, 193 Ill. App. 3d 324, 328 (1989). Once the failure to make payment is shown, the burden shifts to the alleged contemnor to show that her noncompliance was not wilful. *In re Marriage of Petersen*, 319 Ill. App. 3d 325, 332 (2001). Generally, "[w]hether noncompliance is wilful or the alleged contemnor had a valid excuse for noncompliance is a question of fact, and the finding of the circuit court will not be disturbed unless it is against the manifest weight of the evidence or the record reflects an abuse of discretion." *Id.*

¶ 14 In this case, though, the trial court dismissed the petition for a rule to show cause pursuant to section 2-619 of the Code. "An appeal from a section 2-619 dismissal is the same in nature as one following a grant of summary judgment; both are matters given to *de novo* review. [Citation.] In such cases, the reviewing court must determine whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper

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as a matter of law." *Guzman v. C. R. Epperson Construction, Inc.*, 196 Ill. 2d 391, 397 (2001).

¶ 15 Respondent contends the trial court correctly dismissed petitioner's petition for a rule to show cause because her obligation under paragraph number 3 of the marital settlement agreement to pay off the home equity line of credit was discharged in the chapter 7 bankruptcy proceedings and, therefore, she cannot be held in contempt for failing to make said payoff. Petitioner contends respondent is incorrect and, that the trial court erred in granting respondent's motion to dismiss because under section 523(a)(15) of the Bankruptcy Code, respondent's obligation to pay off the home equity line of credit is excepted from discharge. When arguing that a debt falls within a section 523 exception to discharge, "[t]he creditor has the burden of establishing, by a preponderance of the evidence, that the claim is not dischargeable. [Citation.] A court will construe the exceptions to discharge strictly against the creditor and liberally in the debtor's favor." *Schroeder v. Winyard*, 375 Ill. App. 3d 358, 361-62 (2007).

¶ 16 Section 523(a)(15) of the Bankruptcy Code states in relevant part:

"(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

\* \* \*

(15) to a spouse, former spouse, or child of the debtor \*\*\* that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit." 11 U.S.C.A. § 523(a)(15) (2010).

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¶ 17 Petitioner argues that respondent's obligation to pay off the home equity line of credit was a debt owed to him and, that it was incurred in the course of their divorce and in connection with the divorce decree. Therefore, petitioner contends respondent's obligation to pay off the home equity line of credit was excepted from discharge under section 523(a)(15) and respondent should be held in contempt for failing to make said payoff.

¶ 18 Respondent counters that the trial court correctly dismissed petitioner's petition for a rule to show cause because her obligation under paragraph number 3 of the marital settlement agreement to pay off the home equity line of credit did not fall within the section 523(a)(15) dischargeability exception. Respondent further argues that the trial court did not have subject-matter jurisdiction over the matters alleged in the petition for a rule to show cause and, that it would be inequitable for petitioner "to sit on his rights, fail to appear at the creditors meeting held by the Bankruptcy trustee, and fail to make any objections to the chapter 7 discharge, but subsequently appear before the trial court looking to take a proverbial 'second bite at the apple.' " Respondent also argues that the trial court properly vacated the February 10, 2011, order denying her motion to dismiss the petition for a rule to show cause, based on the "procedural irregularity that occurred during the February 10, 2011, hearing."

¶ 19 The trial court did not err in vacating the February 10, 2011, order and dismissing petitioner's petition for a rule to show cause. As discussed above, respondent filed for chapter 7 bankruptcy on January 27, 2010, and listed the home equity line of credit as one of her debts. Petitioner filed no objections during the bankruptcy proceedings as to the claims made by respondent, including the line of credit. The bankruptcy court entered an order on May 4, 2010, granting respondent a discharge

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of her pre-petition debts. The order noted that most, but not all, types of debts are discharged and it listed the common types of debts that are not discharged. The order did not list the home equity line of credit as one of the debts that had not been discharged. Following the discharge, the trial court entered an agreed order on May 26, 2010, taking the petition for a rule to show cause off call. Based on the discharge order entered by the bankruptcy court which did not specifically except the home equity line of credit from discharge, coupled with petitioner's failure to raise any objections in the bankruptcy action, and the subsequent agreed order to take the petition for a rule to show cause off call, respondent reasonably believed her obligation to repay the home equity line of credit had been discharged. Respondent, therefore, had a valid excuse for not paying off said line of credit and, thus, her failure to make the payoff was not a wilful refusal to obey the trial court's order, nor was it evidence of contempt.

¶ 20 Further, we note that petitioner makes absolutely no argument how, based on these facts, respondent's failure to pay off the home equity line of credit can be considered wilful and evidence of contempt. Petitioner's brief centers on whether respondent's obligation to pay off the home equity line of credit should be considered excepted from discharge under section 523(a)(15), but he fails to make any argument how respondent can be found in contempt where the bankruptcy court order indicated that respondent's obligation to make said payoff was not excepted from discharge and, where petitioner made no objections thereto, and even entered into an agreed order to take the petition off call. Petitioner has waived review of the issue of respondent's alleged contempt by failing to make a cohesive legal argument or an adequate analysis of case law in support thereof. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72

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(1994) (quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986)) (" [a] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.' ")

¶ 21 Also, as appellant, petitioner had the burden of presenting a sufficiently complete record of the proceedings to support a claim of error. *Midstate Siding & Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). In the absence of a complete record, a reviewing court presumes an order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Foutch*, 99 Ill. 2d at 392. "In fact, when the record on appeal is incomplete, a reviewing court should actually 'indulge in every reasonable presumption favorable to the judgment from which the appeal is taken, including that the trial court ruled or acted correctly.'" *Smolinski v. Vojta*, 363 Ill. App. 3d 752, 757-58 (2006) (quoting *People v. Majer*, 131 Ill. App. 3d 80, 84 (1985)).

¶ 22 Petitioner failed to include, in the record on appeal, transcripts from the hearing relating to the dispositive motion. Specifically, we are without a transcript as to the June 3, 2011, hearing on respondent's motion to reconsider, in which the trial court vacated its February 10 order and dismissed petitioner's petition for a rule to show cause. Petitioner also failed to submit a certified bystander report or an agreed statement of facts as to this proceeding. Ill. S. Ct. R. 323(c), (d) (eff. Dec. 13, 2005). We do not have a record of the issues that were addressed at the hearing or, the arguments and evidence that were presented or considered there by the trial court in deciding this matter. In the absence of a complete record, we will presume the order of the trial court was proper.

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¶ 23 Accordingly, we affirm the trial court's order vacating the February 10 order and dismissing petitioner's petition for a rule to show cause. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 24 Affirmed.