

No. 1-11-1941

**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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<i>In re</i> Marriage of: SENADA MAHMUTOVIC,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 08 D 9648
	)	
MUNIR MAHMUTOVIC,	)	Honorable
	)	Raul Vega,
Respondent-Appellant.	)	Judge Presiding.

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JUSTICE SIMON delivered the judgment of the court.  
Harris, P.J., and Connors, J., concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Where husband presented no evidence to dispute court's previous finding of imputed income, entry of order reflecting that amount did not constitute abuse of discretion, and court had ability to award rights to property in foreign country; the judgment of the circuit court was affirmed.
- ¶ 2 Defendant Munir Mahmutovic appeals from the circuit court's order denying his motion to vacate a default judgment entered against him in a dissolution of marriage proceeding initiated in 2008 by Senada Mahmutovic. On appeal, Munir contends the circuit court abused its discretion in imputing to him an \$8,000 monthly gross income and ordering him to pay child support of approximately \$1,230 per month based on that imputed income. Munir also asserts the court lacked the authority to award Senada ownership of property located in a foreign country.

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Although Senada has not filed a brief in this court, we can consider the merits of Munir's appeal on his brief alone. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) (such review is allowable if record is simple and errors can be considered without additional briefing). We affirm.

¶ 3 The record on appeal establishes that on October 8, 2008, Seneda filed a petition for dissolution of marriage, which stated that the parties were married on May 29, 2003, and have one child, Nina, born on December 14, 2004. In January 2009, Seneda filed a petition for temporary and permanent custody, child support and payment of expenses. Seneda also sought exclusive possession of the marital residence in Chicago.

¶ 4 Seneda filed a motion for default judgment, asserting Munir had been served with the petition for dissolution on October 18, 2008, but had not filed an appearance or answer. On March 30, 2009, the court entered an order stating that Munir "is in default as a result of his failure to file [an] answer or appearance in this matter." The order further stated that the case was set for a default proveup hearing "without need for additional notice."

¶ 5 On April 7, 2009, the circuit court entered a default judgment of dissolution of marriage. The court entered a support order, which is contained in the record on appeal, indicating Munir had a net monthly income of \$6,160 and was required to pay monthly child support of \$1,232 and maintenance of \$1,800 for five years. The judgment listed several parcels of property owned by the couple in Chicago in addition to the marital residence. On June 12, 2009, Seneda filed a petition for rule to show cause, asserting that Munir had not complied with the judgment and refused to pay the child support and maintenance amounts, in addition to other required payments.

¶ 6 On June 16, 2009, Munir filed a motion to vacate the default judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2008)), arguing although Seneda told him she would withdraw the dissolution petition, she continued the proceedings unbeknownst to him. On September 18, 2009, the court entered an agreed order

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vacating the judgment of dissolution. On December 3, 2009, Munir filed an answer to the petition for dissolution.

¶ 7 In August 2010, Munir was again held in default. In October 2010, Munir filed a petition to vacate the August 2010 default judgment, asserting he was temporarily without representation by counsel during that period and that he lacked notice of the proceeding. On October 29, 2010, the circuit court denied Munir's motion to vacate the default judgment. The court also denied Munir's motion for reconsideration of that ruling.

¶ 8 On May 6, 2011, a prove-up hearing was held on the entry of the judgment of dissolution of marriage. Seneda testified that as part of the April 2009 judgment, a monthly income of \$8,000 was imputed to Munir. Counsel for Munir objected to the relevance of that earlier determination to the instant hearing. The court stated it was not "bound to accept" the ruling of the prior judge but ruled that Munir's attorney could "ask the question and the basis underlying that amount of 8,000 a month."

¶ 9 Seneda's counsel asserted Munir had not provided any tax returns or pay statements during the three years of litigation, had been held in default and had not participated in the case to that point. The court stated:

"So that everybody's position, at least in front of me today, is on the record, I am going to allow [Munir's attorney] to make appropriate objections with respect to the \$8,000. I am going to allow you to inquire as to what the basis of that \$8,000 was, and if that is still the appropriate amount that the court should impute for purposes of child support."

¶ 10 Seneda testified Munir owned a construction company. As to the marital residence and the real property purchased during the marriage, Seneda stated she sought possession of an apartment in Sarajevo,<sup>1</sup> which the couple purchased in 2003 after they were married.

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<sup>1</sup> Sarajevo is the former capital city of Yugoslavia and is now the capital of the country of Bosnia-Herzegovina.

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¶ 11 Munir's counsel objected to the entry of any judgment involving property in another country, stating that the court lacked jurisdiction over foreign properties. The court stated it had jurisdiction over the parties and could compel Munir to turn over property. Seneda's counsel asked if she understood she would have to go to Sarajevo to enforce her rights to the property, and Seneda responded yes.

¶ 12 Seneda testified pursuant to the 2009 support order, Munir had been paying her \$1,500 each month until February 2011. Counsel for Seneda argued Munir's payments "would actually be in excess of an imputed income of \$8,000 a month. We are actually only asking him to pay \$1,232 ultimately based on that \$8,000." Munir's counsel stated that "the actual payments have been between [\$600] and \$800 a month depending on [Munir's] income which is derived from self-employment." Seneda's counsel also objected to Munir's attorney speaking on behalf of Munir, pointing out that Munir was not present at the hearing and had been held in default previously. Seneda testified the last payment she received from Munir was \$550 in February.

¶ 13 During that questioning, Munir's counsel apparently left the courtroom. An associate of the law firm representing Munir was present and told the court that Munir's counsel was "held up" in another courtroom and would return in 5 or 10 minutes. The court noted the absence of Munir's counsel and also noted Munir had been in default. The court noted that it had heard the objections of Munir's counsel "and I do understand that he will be filing further objections to this, and I am going to proceed and enter judgment as I deem fit."

¶ 14 The court made oral rulings pertaining to visitation. The court asked counsel for Seneda why the court should not award the Chicago properties to Munir in exchange for Seneda receiving the apartment in Sarajevo. Seneda's counsel argued that division of property was not equitable and asked the court to reserve judgment on the Chicago properties.

¶ 15 Munir's attorney returned to the courtroom and apologized to the court, after which the court set out various rulings. The court held that it had jurisdiction over the parties and the subject matter and found that Munir appeared but "failed to participate in these proceedings" and

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remained in default. The court awarded child support of \$1,234 per month, or 20 percent of Munir's net monthly income of \$6,172. The court also awarded the Sarajevo apartment to Seneda and made various other rulings.

¶ 16 On May 9, 2011, the circuit court entered a judgment for dissolution of marriage reflecting those findings. Defendant filed a motion to vacate that judgment, and the circuit court denied that motion on June 15, 2011. Defendant now appeals that ruling.

¶ 17 On appeal, Munir first contends the circuit court abused its discretion in finding he had a monthly gross income of \$8,000 and ordering him to pay child support commensurate with that income. He argues the court did not establish any factor necessary to impute his income as a non-custodial parent, such as voluntary unemployment or an attempt to evade a support obligation.

¶ 18 Findings of a trial court as to net income and the awarding of child support are within the court's discretion and will not be disturbed on review absent an abuse of that discretion. *In re Marriage of Bradley*, 2011 IL App (4th) 110392, ¶ 42. The record illustrates that Munir's net monthly income of \$6,160 was listed on a support order following the April 2009 default judgment for dissolution. The record is devoid of any materials or transcripts relating to the 2009 support order. As the appellant, it is Munir's burden to provide a sufficiently complete record to support a claim of error and, absent such a record, we will resolve any doubts arising from the incompleteness of the record against the appellant. See *Dolan v. O'Callaghan*, 2012 IL App (1st) 111505, ¶ 49. For that reason, this court lacks any basis to disturb the 2009 support order.

¶ 19 While Munir asserts on appeal that the May 6, 2011, proceeding was "replete with one-sided testimony and unsubstantiated allegations," the court expressly noted that Munir's counsel could challenge the basis of the imputed income. Munir's counsel was free to call him as a witness to testify as to a change in Munir's situation to justify a modification in the child support amount. Although Munir's attorney contended his client had in fact been making payments of \$600 to \$800 per month, counsel offered no proof of Munir's income or testimony to rebut the

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previous determination of the imputed income of \$8,000 per month. Therefore, the circuit court's order reflecting that income amount and a corresponding amount of support did not constitute an abuse of discretion.

¶ 20 Munir's remaining assertion on appeal is that the circuit court lacked jurisdiction to affect the title to the couple's apartment in Sarajevo. In support of that contention, Munir cites *Chirekos v. Chirekos*, 33 Ill. App. 3d 606, 610-11 (1975), which holds the circuit court in that Illinois divorce proceeding had *in personam* jurisdiction over the parties and could only grant an equitable lien on property in Arizona, as opposed to affecting the property's title.

¶ 21 The court in this case did not exceed its power as to the Sarajevo property. Though a court generally must have jurisdiction over land before affecting rights and interests in the property, where the court has *in personam* jurisdiction over the parties, "the court may affect the land indirectly by acting directly on the interested parties." *De Licea v. Reyes*, 87 Ill. App. 3d 704, 707 (1980); see also *In re Estate of Medlen*, 286 Ill. App. 3d 860, 865 (1997).

¶ 22 In the context of a divorce proceeding, this court had held that if the trial court has obtained *in personam* jurisdiction over a respondent, "it is beyond dispute that its jurisdiction continues in order to enforce its rulings." *In re Marriage of Miller*, 108 Ill. App. 3d 63, 67 (1982). As to foreign real estate, a trial court with personal jurisdiction "may order a conveyance of and enforce that order" and "may also impose an equitable lien thereon, since such an interest does not affect the title." *Id.* The court here had the authority to award the Sarajevo property to Seneda. Indeed, counsel for Seneda referred to the requirement that his client complete an additional step to perfect that judgment when counsel asked Seneda if she knew "she would have to go to Sarajevo to enforce her rights to the property."

¶ 23 In conclusion, the circuit court did not abuse its discretion in imputing Munir's income and entering a child support order reflecting that income in light of the evidence presented. The court also did not exceed its authority in awarding the Sarajevo property to Seneda.

¶ 24 Accordingly, the judgment of the circuit court is affirmed.

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¶ 25 Affirmed.