

No. 1-11-1958

**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(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN RE THE MARRIAGE OF JOHN ANZELONE,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	09 D2 30321
	)	
CAROL ANZELONE,	)	Honorable
	)	Jeanne M. Reynolds,
Respondent-Appellee.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Steele and Justice Murphy concurred in the judgment.

**ORDER**

¶ 1 *Held:* Section 401 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/401(2) (West 2008)) permits the court to enter a judgment dissolving a marriage if the marriage irretrievably broke down more than two years before the entry of judgment. Therefore, where the record on appeal fails to show that the trial court abused its discretion in its assessment and allocation of the parties' assets and liabilities, and in its award of maintenance, we must affirm the trial court's judgment.

¶ 2 When the trial court dissolved the marriage of John and Carol Anzelone, it also distributed the parties' assets and liabilities, and it ordered John to pay Carol maintenance.

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John, who appeals from the judgment, did not include a trial transcript or a bystander's report in the record on appeal, and therefore we find our review severely circumscribed. John asks us to reverse the award of maintenance, and the assessments of assets and liability for loans. John also claims that the court had a duty to dismiss his petition when it found that the parties had separated less than two years before the hearing on the petition.

¶ 3 We hold that the record on appeal does not substantiate John's claim that the court abused its discretion in its award of maintenance. Neither does the record show that John lacked an adequate opportunity to respond to the court's *sua sponte* suggestion that John dissipated marital assets. The court correctly found that the evidence showed that John, through his agent, Carol, assumed responsibility for repaying college loans for the parties' children. The record supports the court's finding that the parties separated more than two years before the court entered its judgment. Accordingly, we affirm the trial court's judgment.

¶ 4 BACKGROUND

¶ 5 The trial court's judgment specifies its findings of fact. The incompleteness of the record requires us to presume that the evidence at the hearing supported the trial court's findings. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984); *Chicago Title & Trust Co. v. Chicago Title & Trust Co.*, 248 Ill. App. 3d 1065, 1075 (1993). Thus, we take our statement of facts from the trial court's findings.

¶ 6 John married Carol in 1979, and they had two children, one born in 1980 and the other in 1982. Both children needed loans for college costs. Carol discussed the loans with

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John and John directed her to sign his name to two of the loan contracts. Their children signed two other loan contracts in their own names, but John and Carol promised that they would pay off the loans for their children. Carol made the payments on all four loans until August 2009. When Carol moved out of the shared home, she told John to make the payments due on the loans in his name. At that time, the outstanding balances on those two loans totaled \$27,604.67. Carol continued making payments on the two loans in the names of their children.

¶ 7 On September 14, 2009, John filed a petition for dissolution of the marriage. The trial court ordered John to pay Carol about \$6,000 per year as interim maintenance. After discovery, in which John tried to find evidence that Carol dissipated marital assets, the trial court held a hearing on the petition in April 2011. John earned most of the family's income. At the time of the hearing, John was 53 years old, in good health, and working as a manager, earning about \$70,000 per year.

¶ 8 Carol, 66 years old, did child care work, babysitting and house cleaning. Her income from that work, together with her social security income, brought her a total income of about \$12,000 per year. Carol had surgery for breast cancer in 2004, and at the time of the hearing, she suffered from high blood pressure, high cholesterol, rheumatoid arthritis and spinal stenosis. She could not support herself without maintenance from John. Carol used her credit cards to pay family expenses. Her debt on the cards totaled \$8,000 before the parties separated. At the beginning of 2011, the outstanding balances on the two loans in the children's names totaled \$19,329.53.



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parties' assets, liabilities and income. We address the issues separately.

¶ 13 Maintenance

¶ 14 John argues that the court awarded maintenance in excess of his ability to pay. A reviewing court will not disturb the trial court's maintenance award unless the court abused its discretion. *In re Marriage of Reynard*, 344 Ill. App. 3d 785, 790 (2003). The court set maintenance to equalize the parties' income, as it raised Carol's income from \$1,000 per month to about \$3,350 per month, and it lowered John's income from \$5,800 per month to \$3,450 per month. John also received the larger portion of the marital estate, as Carol took assets totaling about \$2,000, while the court awarded John assets valued at \$33,700. While both parties will face difficulty meeting the necessary payments on the debts they have incurred, we cannot say that the award here shows that the trial court failed to consider the parties' ability to pay all the amounts ordered. See *In re Marriage of Vernon*, 253 Ill. App. 3d 783, 787-88 (1993). In light of the unequal distribution of assets and the unequal earning power of the parties, we cannot say that the trial court abused its discretion when it awarded Carol maintenance to make her income approximate John's income. See *Reynard*, 344 Ill. App. 3d at 792.

¶ 15 Dissipation

¶ 16 Next, John argues that the trial court effectively charged him with dissipating marital assets when it counted his payment of \$20,000 to his attorney as an advance on the marital estate. He also argues that the court lacked authority to do so because Carol gave no notice that she would seek to charge him with dissipating marital assets. John cites *In re Marriage*

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of *Henke*, 313 Ill. App. 3d 159 (2000), in support of his argument.

¶ 17 In *Henke*, the trial court raised the issue of dissipation *sua sponte* and found that the petitioner had dissipated some marital assets. The petitioner, on appeal, argued that he did not receive sufficient notice that the trial court might address the issue of dissipation. The *Henke* court affirmed the trial court's finding of dissipation, as the appellate court held that the petitioner had an adequate opportunity at the trial to explain his use of the funds and defend it as a marital use. *Henke*, 313 Ill. App. 3d at 178.

¶ 18 Here, too, the trial court apparently raised the dissipation issue *sua sponte*. We have no transcript or bystander's report from the trial, so we must presume that the trial court gave John an adequate opportunity to explain his use of the funds. See *Foutch*, 99 Ill. 2d at 391-92. We note that the use of marital assets to pay fees to one party's attorney for the divorce constitutes dissipation of marital assets. *In re Marriage of DeLarco*, 313 Ill. App. 3d 107, 112 (2000); *In re Marriage of Toth*, 224 Ill. App. 3d 43, 50 (1991). We find no reversible error in the trial court's holding that the \$20,000 John paid to his attorney counted as an advance against his part of the marital estate. See 750 ILCS 5/501(c-1)(2) (West 2008).

¶ 19 College Loans

¶ 20 John also argues that the court erred when it ordered him to pay the four college loans for his children. The court ordered Carol, not John, to pay the loans in the names of the children. John cites no authority concerning the court's order that Carol must pay those two loans, and therefore he has forfeited his argument that the court erred by ordering Carol to pay the loans. See *In re Marriage of Suriano*, 324 Ill. App. 3d 839, 851 (2001).

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¶ 21 The trial court found that John expressly authorized Carol to act as his agent for purposes of signing his name to the other two loan contracts. John argues that because he never signed any written document so authorizing Carol, the court lacked any basis for holding him liable for the debt. We review *de novo*, as an issue of law, the issue of whether the court could find that Carol acted as John's agent when she signed his name on the contracts, although she presented no written authorization for her to sign John's name to the contracts. *Woods v. Cole*, 181 Ill.2d 512, 516 (1998).

¶ 22 To find that an agent acted within the scope of her actual authority, the court must find that some words or acts of the principal authorized the agent to act on the principal's behalf. *Lang v. Consumers Insurance Service, Inc.*, 222 Ill. App.3d 226, 232 (1991). We note that the law does not require written authorizations. *Lang*, 222 Ill. App. 3d at 232; *Mateyka v. Schroeder*, 152 Ill. App. 3d 854, 862-63 (1987). The court here properly relied on Carol's testimony about her conversations with John, finding that John, during those conversations, authorized Carol to sign his name as borrower for two loans. Accordingly, we hold that the trial court did not err when it allocated to John the liability for repayment of the two loans signed in his name for his children's college expenses.

¶ 23 Separation Period

¶ 24 Finally, John argues that section 401 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/401(a)(2) (West 2008)) required dismissal of his petition for dissolution of the marriage. We review the trial court's interpretation of a statute *de novo*. *Vuletich v. United States Steel Corp.*, 117 Ill. 2d 417, 421 (1987). Under section 401, the

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court may order a dissolution of a marriage if "(1) the parties have been separated for at least two years; (2) irreconcilable differences have caused an irretrievable breakdown of the marriage; and (3) attempts at reconciliation have failed or future attempts at reconciliation would be impractical and not in the best interests of the family." *In re Marriage of Semmler*, 107 Ill.2d 130, 134 (1985).

¶ 25 The trial court found that the marriage irretrievably broke down when the parties separated, on June 1, 2009. The court heard evidence on the petition in April 2011, less than two years after the separation, but the court did not enter judgment on the petition until June 24, 2011, more than two years after the separation. John presented no evidence of a reconciliation prior to the entry of judgment. Thus, the record supports the court's finding that as of the date of the judgment the parties had lived separately for more than two years. Section 401 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/401(a)(2) (West 2008)) did not require dismissal of the petition.

¶ 26

#### CONCLUSION

¶ 27

John's failure to provide a transcript or a bystander's report of the trial limited our review of the issues that he sought to raise. Without a transcript or a bystander's report, this court cannot say that the trial court abused its discretion by awarding Carol maintenance of \$2,350 per month. Moreover, in the absence of a transcript or a bystander's report, this court cannot say that John had an inadequate opportunity to respond to charges that he dissipated marital assets by using those assets to pay his attorney for work on the divorce. The trial court's findings of fact also supported its judgment dissolving the marriage more than two

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years after the parties started living separately. Therefore, we affirm the trial court's judgment.

¶ 28 Affirmed.