

No. 1-12-0614

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF QUIERA GUERRERO,)	Appeal from the
n/k/a Keyla M. Velasquez,)	Circuit Court of
)	Cook County.
Petitioner-Appellee,)	
)	
and)	Nos. 08 D2 30165
)	08 D 5477
)	
VICTOR H. GUERRERO,)	Honorable
)	Barbara Meyer and
)	Jeanne M. Reynolds,
Respondent-Appellant.)	Judges Presiding.

JUSTICE PALMER delivered the judgment of the court.
Justices Howse and Taylor concurred in the judgment.

ORDER

¶ 1 **Held:** Trial court's order finding respondent in indirect civil contempt affirmed where respondent failed to present a sufficiently complete record of the trial court proceedings to enable our review of his claims.

¶ 2 Respondent Victor H. Guerrero (Victor) appeals from an order of the circuit court of Cook County finding him in indirect civil contempt of court because he failed to pay off the balloon note and mortgage on property he owned in joint tenancy with his former spouse, petitioner Quiera Guerrero, now know as Keyla M. Velasquez (Keyla). On appeal, Victor

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contends that he should not have been found in contempt because the evidence established that his behavior was not willful. He also contends that the trial court erred in failing to make a finding on this issue.

¶ 3 Victor and Keyla were divorced on March 5, 2009. They owned a six-unit apartment building in joint tenancy at 514 Piper Lane in Prospect Heights (the Piper property). The property had a five-year balloon note and a mortgage in both parties' names. The parties' marital settlement agreement, dated March 5, 2009, provided that the property was to be listed for sale for its appraised value. Pending a sale, Victor was required to manage the property and collect all rents, which were to be deposited in a joint account. From that account, Victor was to pay all expenses related to the building, and he was also required to pay the principal and interest as it became due on the mortgage for the property. When the property was sold, the parties would divide equally any remaining balance in the account. On the date the marital settlement agreement was issued, the mortgage indebtedness was approximately \$389,000.

¶ 4 On March 3, 2010, an agreed order was issued, finding that Keyla had executed a quit claim deed transferring to Victor all of her interest in the Piper property. The order recited that the Piper property was the sole and separate property of Victor and he was solely responsible for the principal and interest due on the mortgage. On October 13, 2011, Keyla filed a petition for a rule to show cause against Victor for indirect civil contempt. Keyla alleged that both parties continued to be named on the mortgage for the Piper property and that the promissory note for the mortgage in the amount of \$339,513.88 was in default. She also alleged that a complaint to foreclose on the mortgage had been filed, naming both Victor and her as defendants. As a result of Victor not paying off the promissory note, her credit rating had "suffered a downgrade" and her ability to borrow was affected. Keyla further alleged that Victor's failure to pay off the promissory note as ordered was willful and contumacious. As a remedy, she requested an order finding Victor in contempt of court and requiring him to disgorge to her all rents collected on the

Piper property from the time he stopped making payments on the mortgage. She also requested that the Piper property be placed in receivership and that she be named the receiver. The property was to be listed for sale "under fire sale conditions."

¶ 5 Victor filed a response requesting that the petition be denied. He asserted, in pertinent part, the following. He did not have the ability to pay off the mortgage and he had numerous other expenses, which he listed. His efforts to sell the Piper property had been unavailing. No court had issued a judgment requiring him to indemnify or hold Keyla harmless from any expenses associated with the property. Keyla had failed to offer proof that her credit had been affected or that she had suffered monetary loss from any change in her credit rating. Keyla contributed to his inability to pay expenses by refusing to allow him to reclaim woodcrafting tools worth \$20,800, which he used in his work. He had been unable to collect rent from tenants residing at the property.

¶ 6 An evidentiary hearing on Keyla's contempt petition was held on January 25, 2012, but the record contains no transcript of this hearing. Following the hearing, the circuit court issued an order finding Victor to be in indirect civil contempt of court for failing to pay off the mortgage on the Piper property. The court ordered that all rents dating back to October 11, 2011, would be collected by Keyla. She was also to collect future rents. These funds were to be placed in an escrow account from which she was to pay for utilities, insurance, and reasonable repairs on the Piper property. A status hearing was scheduled for March 7, 2012, but Victor filed this appeal from the contempt order on February 24, 2012. Keyla has failed to file a responsive brief, but we will consider the appeal on Victor's brief. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 7 On appeal, Victor contends that the trial court failed to make a finding of whether his conduct was willful and contumacious. He also alleges that the evidence at the hearing establishes that his conduct was neither willful nor contumacious. As we have noted, the record

does not contain a transcript of the January 24, 2012, evidentiary hearing on Keyla's contempt petition. Victor has filed with this court a purported bystander's report of those proceedings, including summaries of his testimony and that of Keyla. But there is no indication that he served this report on Keyla or that he submitted it to the trial court for approval and certification. When a party seeks to file a bystander's report, Illinois Supreme Court Rule 323(c) (effective Dec. 13, 2005) requires the filing party to submit the proposed report to all parties within 28 days of the filing of the notice of appeal. Those other parties then have 14 days to provide proposed amendments or their own proposed report. Within seven days after that, the party seeking to file the report must present it, along with any proposed amendments or reports, to the trial court for settlement and approval. Ill. S. Ct. R. 323(c). There is no indication in the record that Victor, as appellant, took any of these steps. His proposed bystander's report does not bear the trial court's certification, nor has he filed any stipulation concerning such a report.

¶ 8 Absent certification by the trial court, or a stipulation by all parties, no bystander's report may be filed. Ill. S. Ct. R. 323(c). Based on the parties' filings with the trial court, it is clear that the court had to make factual determinations based upon the testimony of Keyla and Victor at the hearing. In the filings below, Victor contested Keyla's claim that her credit rating had suffered because of the mortgage foreclosure proceedings. Keyla alleged that when Victor failed to pay off the mortgage, his behavior was willful and contumacious. To counter this assertion in the trial court, Victor made a number of factual claims in his answer to Keyla's petition. He claimed that he did not have the money to pay off the mortgage. He claimed that he had been unable to collect rent. He claimed that Keyla contributed to his dire financial situation by barring him from reclaiming tools worth over \$20,000. He also presented an extensive list of his expenses. All of these claims were factual in nature. Furthermore, Victor claims on appeal that the trial court failed to rule on whether his conduct was willful and contumacious.

¶ 9 However, Victor has failed to provide a sufficient record of the proceedings below to

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allow us to properly evaluate his claims. Victor has not provided a transcript of the hearing on Keyla's petition or an acceptable substitute such as a certified bystanders report. See Ill. S. Ct. R. 323(c). As the appellant, Victor has the burden of providing a sufficiently complete record to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Absent such a record, a reviewing court must indulge in every reasonable presumption in favor of the judgment and will presume that the trial court's ruling was in conformity with the law and had a sufficient basis. *Foutch*, 99 Ill. 2d at 392; *Lewandowski v. Jelenski*, 401 Ill. App. 3d 893, 902 (2010).

¶ 10 Without a transcript or a properly certified bystander's report of the evidentiary hearing on Keyla's petition, we cannot evaluate Victor's claims that the evidence he presented at the hearing established that his behavior was not willful or that the trial court failed to rule on whether Victor's conduct was willful and contumacious. Accordingly, we must presume that the trial court acted in conformity with the law and had a sufficient factual basis when it found Victor in indirect civil contempt.

¶ 11 Affirmed.