

No. 1-12-1947

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)	Appeal from the
)	Circuit Court of
KIMBERLY WARE,)	Cook County
)	
Petitioner-Appellee and Counter-Respondent,)	
)	No. 05 D 5541
v.)	
)	
SAMUEL K. WARE, SR.,)	Honorable
)	Mark J. Lopez,
Respondent-Appellant and Counter-Petitioner.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn and Justice Pierce concurred in the judgment.

ORDER

Held: Appellant in this case has failed to properly present to this court any issues for our review. The arguments he raised cannot be reviewed due to an insufficient record. Accordingly, without any arguments properly presented for our review, we find that appellant has forfeited his appeal and affirm the judgment of the circuit court.

¶ 1 Appellant Samuel K. Ware, Sr. (Samuel), *pro se*, appeals the circuit court's order granting his ex-wife, Kimberly Ware's (Kimberly), motion to enter a Qualified Illinois Domestic Relations Order (QILDRO) whereby Samuel's pension with the Municipal Employees Annuity and Benefit Fund of Chicago (pension) was divided according to the language contained in the parties' marital settlement agreement. At issue is whether Samuel properly presented any issues for our review. We hold he has not done so because the arguments he raised are either waived or cannot be addressed where the evidence of record before this court is insufficient. Accordingly, we affirm the judgment of the circuit court.

¶ 2 BACKGROUND

¶ 3 On May 18, 2005, Kimberly filed a petition for legal separation from her husband, Samuel. In response, Samuel filed a counter-petition for dissolution of marriage. Kimberly subsequently withdrew her petition for legal separation on August 7, 2006.

¶ 4 On February 15, 2007, the circuit court entered a judgment of dissolution of marriage. The circuit court found, in relevant part, that the parties were married on November 20, 1982, and that irreconcilable differences caused the breakdown of the marriage. A marital settlement agreement, dated February 15, 2007, relevant to this appeal, addressed how the real and personal property would be divided amongst the parties. The circuit court found that the marital settlement agreement was "entered into freely and voluntarily between the parties" and that its terms "are not unconscionable."

¶ 5 The marital settlement agreement, in turn, provided that the parties had "sufficient information about each other's property, liabilities, and income," that "[t]hey both consider this

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agreement to be fair and reasonable," and that the parties signed the document "freely." Under the heading "PROPERTY SETTLEMENT," the marital settlement agreement provides the following:

"Pension and/or Retirement Accounts: KIMBERLY shall be awarded forty percent (40%) of her entitled marital portion of SAMUEL'S pension plans from all workplaces."

The marital settlement agreement further provides that "this agreement is a final settlement of this matter, " and that the parties "waive *** their right to come back to this Court or any other Court and ask for changes in this agreement or in the final judgment." The following exceptions to the waiver clause were included in the marital settlement agreement: "child support, child custody, and visitation, or other instances where the right to come back to court cannot be waived" and where the parties agree in writing to any change.

¶ 6 During the hearing before the circuit court for the entry of the judgment of dissolution of marriage, Samuel was asked by his attorney the following question:

"Q. Pursuant to the terms of this agreement, your wife is to be awarded 40 percent of the marital portion of your pension from your place of employment?"

A. Correct."

During the hearing, after taking testimony from both Samuel and Kimberly, the circuit court noted that Samuel "showed a little hesitancy or reluctance in reference to the tax liability, if any." The circuit court allowed Samuel and his attorney time to discuss the agreement so that Samuel

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would be "fully aware of the consequences of what he's agreeing to." Prior to passing the matter, Samuel's attorney stated to the circuit court:

"a concession that was made in reference to kind of an offset to [Samuel] agreeing to the payment of the taxes and assuming a student loan was, normally his employment benefits, his pension benefits would be divided up equally between the parties. But his wife has agreed to accept 40 percent of those employment benefits that accrued during the course of the marriage in lieu of these other responsibilities."

After the matter was passed and recalled, Samuel agreed to the marital settlement agreement.

¶ 7 On May 13, 2009, Kimberly, *pro se*, filed a motion asking to "obtain 40% of *** entitled marital portion of Samuel's pension from all work places." A ruling on this motion does not appear in the record. On December 2, 2011, however, Kimberly, through attorney Daniel J. Moriarty, P.C., motioned for the entry of a QILDRO.¹ On December 6, 2011, Samuel, *pro se*, filed a motion to dismiss alleging that Daniel J. Moriarty failed to file an appearance. Samuel asked that all pleadings filed by Moriarty on Kimberly's behalf be stricken and that the case be dismissed with prejudice.

¶ 8 On December 22, 2011, Kimberly filed a motion "to vacate order entered December 9,

¹ The record discloses that Kimberly had several different attorneys prior to Daniel J. Moriarty.

2011, for want of notice."² Kimberly asserted in her motion that her motion to enter a QILDRO was then currently pending and that Samuel "filed a specious motion to dismiss *** petition predicated upon the fact that Wife's counsel had not filed an Appearance." Kimberly stated further that Samuel's motion "was served to [her] counsel via Notice of Filing but no notice of motion accompanied the motion," and that "S[amuel] appears to have spindled his motion for December 9, 2011 and a briefing order was entered on that date." Kimberly alleged in her motion that Samuel filed his motion "to impede the process incident to entry of the aforementioned QILDRO with the City of Chicago."

¶ 9 On December 30, 2011, Samuel filed a renewed motion to dismiss, alleging that the circuit court did not have jurisdiction and that Kimberly's attorney did not file an appearance.

¶ 10 On January 5, 2012, the circuit court denied Samuel's motion to dismiss. The record does not contain any transcript or bystanders report regarding the motion to dismiss.

¶ 11 On January 12, 2012, Samuel filed an answer to Kimberly's motion for an entry of a QILDRO in which he raised three affirmative defenses. First, he argued that Kimberly is not entitled to a partial refund. Second, that Kimberly was not named as a primary or contingent beneficiary to receive his death benefit. Third, that the number of months of service in the retirement system should be calculated from the date he was employed with the city of Chicago, not the date that he was married to Kimberly.

¶ 12 On May 24, 2012, the circuit court entered an order granting Kimberly's motion to enter a

² We note that no order entered on December 9, 2011, is included in the record before this court.

QILDRO. The circuit court found that the parties were divorced on February 15, 2007. The judgment for dissolution of marriage provided that " ' Kimberly shall be awarded forty percent (40%) of her entitled marital portion of Samuel's pension plans from all workplaces,' " language the circuit court found "to be clear and unambiguous." The circuit court found that "the language of the parties' Marital Settlement Agreement not only fails to identify the fund at issue, but also failed to specify any particular components, nor exclude any components which Kimberly is eligible to receive and should be included in the QILDRO." The circuit court identified and addressed the four components of the pension: the monthly retirement benefit; the termination refund; the partial refund; and the single sum death benefit. Relevant to this appeal, the circuit court also rejected Samuel's contention that the date of his marriage is not applicable to the QILDRO, finding that the administrator of the pension needs the information to determine the marital time period in question. Specifically, the circuit court found:

"In order for the administrator to determine the marital portion, they are required to know the date of the marriage, as well as, the date of dissolution of marriage. The administrator will also identify the date Samuel began his public employment which is also relevant to determine the marital portion to which Kimberly would be entitled. To suggest that the date of marriage is not relevant is incorrect, it is a necessary element for the administrator to determine the marital time period in question. Additionally, page 4 of the 5 page QILDRO form proposed by both parties at

paragraph 9 titled 'Marital Portion Benefit Calculation Formula' at paragraph (17(a)) requires the inclusion of the parties date of marriage."

¶ 13 Accordingly, the circuit court ordered that a QILDRO which conforms to its findings be entered and that Samuel execute the requisite consent form.

¶ 14 On June 11, 2012, Samuel filed a motion to vacate the order entered on May 24, 2012, and for a substitution of judge. Relevant to this appeal, Samuel objected to the circuit court including the date of his marriage to Kimberly in his QILDRO and that the circuit court erred by allowing Kimberly to be represented by an attorney who failed to file an appearance.

¶ 15 On June 14, 2012, the circuit court denied Samuel's motion for substitution of judge "for the reasons stated in open court." Absent from the record is any transcript or bystander's report regarding Samuel's motion for substitution of judge. On July 6, 2012, a QILDRO was entered by the circuit court. On July 9, 2012, Samuel appealed.

¶ 16 On May 29, 2013, this court, upon its own motion, ordered this matter be taken for consideration on the record and Samuel's brief only after Kimberly failed to file a responsive brief within the time prescribed by Illinois Supreme Court Rule 343(a). Ill. S. Ct. R. 343 (a) (eff. July 1, 2008).

¶ 17 ANALYSIS

¶ 18 Before this court, Samuel contends the circuit court erred by "chang[ing] the terms of the agreement without consent of all the parties[,]" that Kimberly's attorney failed to file an appearance before the circuit court, and that the circuit court incorrectly included the date of his

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marriage to Kimberly in the QILDRO, rather than using the starting date of his employment with the city of Chicago. Samuel, however, has not properly presented these arguments for our review, as discussed below.

¶ 19 Illinois Supreme Court Rule 341 governs the form and contents of appellate briefs. Ill. S. Ct. R. 341 (eff. Feb. 6, 2013); *Voris v. Voris*, 2011 IL App (1st) 103814, ¶8. Compliance with Rule 341 is mandatory, and Samuel's status as a *pro se* litigant does not relieve him of his noncompliance with appellate practice rules. *Id.* This court has held that the failure to elaborate on an argument, cite persuasive and relevant authority, or present a well-reasoned argument violates Rule 341(h)(7) and results in waiver of that argument. *Sakellariadas v. Campbell*, 391 Ill. App. 3d 795, 804 (2009) ("The failure to assert a well-reasoned argument supported by legal authority is a violation of Supreme Court Rule 341(h)(7), resulting in waiver."); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010) ("Supreme Court Rule 341(h)(7) requires a clear statement of contentions with supporting citation of authorities and pages of the record relied on. [Citation]. Ill-defined and insufficiently presented issues that do not satisfy the rule are considered waived."). "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991). Proper support for a claim of error requires more than just argument, it must also be supported by authority. *Id.*

¶ 20 Additionally, the appellant bears the burden of presenting to this court a sufficiently complete record for our review of a claim of error. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422

(2009). Without a complete record, we must presume that the relevant order of the circuit court had a sufficient factual basis and conformed with the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. Furthermore, issues raised for the first time on appeal and not first presented to the circuit court are waived. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996) ("It is well settled that issues not raised in the trial court are deemed waived and may not be raised for the first time on appeal.").

¶ 21

Agreement

¶ 22 Samuel first argues that the circuit court erred by "chang[ing] the terms of the agreement without consent of all the parties." Samuel, however, has forfeited this issue because he never raised it before the circuit court. *Haudrich*, 169 Ill. 2d at 536. Prior to the entry of the QILDRO, Samuel only challenged Kimberly's motion for the entry of a QILDRO by alleging that her counsel failed to file an appearance, that the circuit court did not have jurisdiction, and by alleging the following three affirmative defenses in his answer: that Kimberly was not entitled to a partial refund; that she was not entitled to a death benefit; and that the number of months of service in the retirement system should be calculated from the date he was employed with the city of Chicago, not the date he was married to Kimberly. After the entry of the QILDRO, Samuel filed a motion for substitution of judge and a motion to vacate in which he argued that the date of his marriage to Kimberly was improperly included in the QILDRO entered by the circuit court and that Kimberly's counsel did not file an appearance. Absent from his pleadings before the circuit court is any argument addressing any alleged changes to the marital settlement

agreement. Accordingly, Samuel has forfeited his contention before this court that the circuit court improperly changed the terms of the marital settlement agreement.

¶ 23

Appearance

¶ 24 Samuel next argues that the circuit court erred when it allowed Kimberly's counsel to appear without first filing an appearance in violation of Rule 1.4 of the Rules of the Circuit Court of Cook County. Cook Co. Cir. Ct. R. 1.4.(a) (July 1, 1976). We acknowledge that Rule 1.4 of the Rules of the Circuit Court of Cook County does state that "[a]n attorney shall file his appearance before he addresses the court unless he is presenting a motion for leave to appear by intervention or otherwise." Cook Co. Cir. Ct. R. 1.4.(a) (July 1, 1976). We cannot, however, make any decision regarding whether or not Kimberly's attorney filed an appearance because we do not have enough information in the record to make that determination. Samuel raised this issue before the circuit court in a motion to dismiss, a renewed motion to dismiss, and then after the entry of the QILDRO, in the context of a combined motion to vacate and for substitution of judge. On January 5, 2012, the circuit court denied Samuel's motion to dismiss, stating in the order only that the motion was "denied." The record does not contain any transcript or bystanders report regarding this motion. Also missing from the record is any order denying Samuel's motion to vacate or any transcript or bystanders report addressing the motion. There is an order in the record denying Samuel's motion for substitution of judge, but it does not mention Samuel's motion to vacate. The record is also devoid of any transcript or bystanders report regarding Samuel's motion for substitution of judge. It is Samuel's burden, as the appellant, to provide a complete record for our review. *In re Marriage of Gulla*, 234 Ill. 2d at 422. Without a

complete record, we must presume that the relevant order of the circuit court had a sufficient factual basis and conformed with the law. *Foutch*, 99 Ill. 2d at 391-92. With this presumption in mind, and in the absence of information in the record for us to make a decision, we cannot say that the circuit court erred when it denied Samuel's motions raising the issue of whether or not Kimberly's attorney filed an appearance.

¶ 25 Proper Dates Included in the QILDRO

¶ 26 Samuel's final contention is that the circuit court incorrectly included in the QILDRO the date of his marriage to Kimberly. Samuel argues that the circuit court should have used the date of the start of his employment with the City of Chicago.³

¶ 27 Initially, we believe Samuel has misinterpreted the circuit court's ruling regarding whether or not the start of his employment was included in the QILDRO. In its order granting Kimberly's motion for the entry of a QILDRO, the circuit court found that both dates are relevant for inclusion in the QILDRO. Specifically, the circuit court found:

"In order for the administrator to determine the marital portion, they are required to know the date of the marriage, as well as, the date of dissolution of marriage. The administrator will also identify the date Samuel began his public employment which is also relevant to determine the marital portion to which Kimberly

³ We note that Samuel, in his brief before this court, listed this issue as two different issues, his third and fourth issues respectively. We have combined them into one issue to avoid confusion.

would be entitled. To suggest that the date of marriage is not relevant is incorrect, it is a necessary element for the administrator to determine the marital time period in question. Additionally, page 4 of the 5 page QILDRO form proposed by both parties at paragraph 9 titled 'Marital Portion Benefit Calculation Formula' at paragraph (17(a)) requires the inclusion of the parties date of marriage."

As shown, the circuit court did not order that the date of his marriage to Kimberly be included in the QILDRO at the expense of the date Samuel started his employment with the city of Chicago. Rather, both dates are relevant and were ordered to be included in the QILDRO.

¶ 28 Regardless of whether or not Samuel misinterpreted the circuit court's findings regarding the proper dates to include in the QILDRO, Samuel has failed to present to this court any sort of cohesive argument with citation to proper authority in violation of Illinois Supreme Court Rule 341(h)(7). *Sakellariadas*, 391 Ill. App. 3d at 804. As such, he has forfeited this argument. *Id.* In his brief before this court, he only cites one case, *In re Marriage of Richardson*, 381 Ill. App. 3d 47 (2008). After reviewing the *Richardson* case, we do not see its relevance to Samuel's argument here. This court in *Richardson* held that the circuit court did not abuse its discretion when it calculated a divorced couple's benefits under a public pension according to the "widely accepted reserved jurisdiction approach." *Id.* at 58. Under this approach utilized by the circuit court, the date of the marriage and the date of the dissolution were included in the relevant calculations. *Id.* at 50-52. We cannot say that the *Richardson* case supports or is at all relevant

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to the arguments Samuel raises before this court. This court has held that the failure to elaborate on an argument, cite persuasive and relevant authority, or present a well-reasoned argument violates Rule 341(h)(7) and results in waiver of that argument. *Sakellariadas*, 391 Ill. App. 3d at 804. Samuel failed to cite any persuasive or relevant authority in this case which would allow us to properly review his claim of error. As such, we hold he has forfeited this issue.

¶ 29 In conclusion, Samuel failed to properly present to this court any issues for our review. Notwithstanding our quoting authority which uses the term "waiver" where "forfeiture" is the appropriate choice, we hold that the incomplete appellate record hinders our ability to conduct a meaningful review of the circuit court's findings. As such, we find appellant has forfeited his appeal. We affirm the judgment of the circuit court.

¶ 30 CONCLUSION

¶ 31 The judgment of the circuit court is affirmed.

¶ 32 Affirmed.