

2013 IL App (2d) 120952-U
No. 2-12-0952
Order filed June 28, 2013

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
SECOND DISTRICT

<i>In re</i> MARRIAGE OF MARIA C. MIDLASH,)	Appeal from the Circuit Court of Lake County.
)	
Petitioner-Appellant,)	
)	
and)	No. 08-D-179
)	
JAY B. MIDLASH,)	Honorable
)	George D. Strickland,
Respondent-Appellee.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion when it applied a downward deviation from child support guidelines; awarded maintenance in gross; and ordered each party to be responsible for their own attorney fees. We affirmed the judgment of the trial court.
- ¶ 2 On April 3, 2012, the trial court entered a judgment for dissolution of marriage between petitioner, Maria C. Midlash, and respondent, Jay B. Midlash. In the judgment order, the trial court resolved issues of child support, divided property, and ordered each party to pay their own attorney fees. On April 3, 2012, petitioner filed a motion to vacate, modify, or reconsider the judgment (post-

judgment motion) for dissolution of marriage, which the trial court denied on July 26, 2012. On August 21, 2012, petitioner timely filed a notice of appeal, contending that the trial court abused its discretion when it allowed for a downward deviation in child support, awarded airline miles to respondent, and granted an insufficient amount of maintenance in gross. The petitioner also contends that the trial court erred in denying attorney fees, denying petitioner standing to argue certain accounts as being marital property, and setting valuation dates for certain disputed property. We affirm.

¶ 3 The record on appeal, as petitioner has provided to this court, reflects that two children were born to the marriage, and they were 16 and 14 years of age at the time of the trial court's judgment. Respondent was employed for the majority of the marriage, and petitioner did not work outside of the home until 2004. Respondent was employed at Stage Right, Inc., until he was terminated in 2009. Respondent's gross income until that time ranged from \$125,000 to \$415,000 annually. After the respondent's termination at Stage Right, respondent received monthly capital gains payments of \$11,942 until August 2012. Respondent also received monthly unemployment benefits until July 2011 in the amount of \$2,416. Petitioner is employed at Kraft Foods and has a gross income per month of \$4,404.13.

¶ 4 In her post judgment motion, petitioner argued that the record did not support a downward deviation in child support. The trial court found that petitioner had sole custody of the children, with respondent having visitation; i.e., alternate Friday through Mondays, starting Friday afternoons and ending Monday mornings, and overnight on alternating Wednesdays. However, in practice, respondent also has the children from after school until the petitioner returns home from work.

Though it was at no at no cost to respondent, the trial found that this likely defrayed costs that could have been incurred by petitioner.

¶ 5 Petitioner also alleged that the American Express and United Mileage award points that were derived from respondent's time at Stage Right, a total of 1,479,942 miles, were marital property of the parties. Petitioner claimed that the award points were unlike the Yukon automobile that respondent received from his settlement with Stage Right and that the court found to be nonmarital, asserting that the Yukon automobile related to the ownership of stock and the award points related to employment. Also, petitioner stated that the award points were always listed in an account owned by respondent, and there was no evidence to the contrary that those award points were accumulated during the marriage.

¶ 6 Petitioner also alleged in her post judgment motion that the \$30,000 award of maintenance in gross was insufficient. Petitioner alleged that the marriage was of a long duration and the family has a comfortable lifestyle, petitioner was engaged in child rearing while respondent had the opportunity to enhance his future earning potential. She also alleged that respondent would be able to sustain his history of high earnings, and that the award of \$284,743.98 of nonmarital assets to respondent did not equate to only awarding petitioner \$30,000 as maintenance in gross.

¶ 7 Petitioner further alleged that respondent's frivolous and unreasonable positions in the custody trial dramatically increased her attorney fees and diminished the marital estate. She asserted that it would be inequitable to require her to pay all of her attorney fees due to respondent's stated actions.

¶ 8 Also, in support of her post judgment motion, petitioner alleged that she should have been allowed to argue that accounts maintained pursuant to the Uniform Transfer to Minors Act (the

UTMA) were marital property. Petitioner alleged that respondent failed to comply with the regulations regarding the UTMA accounts, in that respondent failed to turn over the accounts to the beneficiaries (petitioner's children from a prior marriage) when they reached the age of majority several years ago. Petitioner asserted that, since there was a failure to comply with these regulations, she should have standing to challenge whether the UTMA accounts were marital property.

¶ 9 On July 26, 2012, the trial court conducted a hearing on petitioner's post judgment motion. Following arguments of the parties, the trial court denied petitioner's motion and also denied petitioner's oral motion to introduce evidence of an American Express bill in support of her request to allocate award points. Petitioner filed a timely notice of appeal.

¶ 10 On appeal, petitioner challenges the trial court's (1) downward deviation from child support guidelines; (2) findings with regards to the division of marital assets; (3) order of maintenance in gross; (4) order that the parties be responsible for their own attorney fees; (5) findings that the petitioner did not have standing to challenge funds held in accounts created pursuant to the UTMA as marital funds; and (6) use of a particular valuation date for marital assets.

¶ 11 Before we consider the merits of all of the issues, we note that the petitioner has failed to provide a complete record on appeal (see Ill. S. Ct. R. 323 (eff. Dec. 13, 2005)). Petitioner has also failed to conform to Illinois Supreme Court Rule 341 (eff. Feb. 6, 2013) in most of her arguments. The following contentions specifically stand out: the trial court erred when it found that the American Express and United Mileage award points were nonmarital property belonging to respondent; the trial court erred when it found that she "did not have standing to challenge respondent's deposits to the accounts created pursuant to the [UTMA]"; and the trial court erred by improperly setting the valuation date of the judgment.

¶ 12 Compliance with the Illinois Supreme Court rules governing the content and format of briefs is mandatory. *In re Marriage of Petrik*, 2012 IL App (2d) 110495, ¶ 38. The rules require that a party's argument contain citation to authority and to the record. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). "A failure to cite relevant authority violates Rule 341 and can cause a party to forfeit consideration of the issue." *Petrik*, 2012 IL App (2d) 110495, ¶ 38 (citing *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23).

¶ 13 Supreme court rules are not mere suggestions. See *Applebaum v. Rush University Medical Center*, 231 Ill. 2d 429, 447 (2008). The appellant bears the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of a complete record, the reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Webster v. Hartman*, 195 Ill. 2d 426, 433 (2001)); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Moreover, we are bound by the rule to resolve any doubts that may arise from the incompleteness of the record against the party who brings the appeal. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 157 (2005); see also *Foutch*, 99 Ill. 2d at 392. Accordingly, we will resolve any doubts arising from this record against petitioner.

¶ 14 In the present case, petitioner fails to include in the record any document as to where or how the American Express or United Mileage award points were derived; nor does petitioner provide citations to the record or authority for her contention that the trial court erred in finding that the American Express and United Mileage award points were nonmarital assets belonging to respondent. Petitioner also failed to address the standard of review for her contention. See Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). Because the inadequate condition of the record on appeal and petitioner's

violations of the supreme court's rules regarding briefs make meaningful review of petitioner's contention impossible, we affirm the trial court's ruling on this issue. See *Midstate*, 204 Ill. 2d at 319; *Foutch*, 99 Ill. 2d at 392.

¶ 15 Petitioner has also failed to include in the record the UTMA account statements. Furthermore, there were no citations to the record regarding her contention that the trial court erred when it refused to allow her to challenge the marital or nonmarital status of the UTMA accounts. Further, petitioner also failed to include the standard of review for this contention. See Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). Because the record is incomplete, we presume that the trial court's order was in conformity with the law and had a sufficient factual basis. See *Midstate*, 204 Ill. 2d at 319; *Foutch*, 99 Ill. 2d at 392. Petitioner failed to provide citations to the record identifying the trial court's ruling on this issue in violation of Rule 341(h)(7). See *Petrik*, 2012 IL App (2d) 110495, ¶ 38. Accordingly, we affirm the trial court's ruling on this issue.

¶ 16 Petitioner's contention that the trial court erred by improperly setting the valuation date of the judgment as October 4, 2011, rather than April 3, 2012, or March 15, 2012, is also in violation of Rule 341(h)(7). Petitioner's argument in support of her contention consists primarily of a statement that the valuation date was set improperly and that a different valuation date should have been utilized. However, though petitioner's brief cites to the record twice, it does not contain one citation pointing to any authority in its four-sentence argument. Also, petitioner's brief fails to include in its argument the standard of review. See Ill. S. Ct. R. 341(h)(3) (eff. Feb. 6, 2013). For these reasons, we find this contention waived. See *Petrik*, 2012 IL App (2d) 110495, ¶ 38.

¶ 17 Turning to the remaining issues, petitioner first contends that the trial court abused its discretion when it applied a downward deviation from child support guidelines. Petitioner argues

that “there was no basis in fact or law warranting a downward deviation from child support guidelines in this case.”

¶ 18 In a dissolution proceeding, the trial court may order either or both of the parents to pay child support in an amount reasonable and necessary for the support of the child, as determined by the guidelines set forth in section 503 of the Illinois Marriage and Dissolution of Marriage Act (the Act). See 750 ILCS 5/503(a)(1) (West 2010). The court may deviate from the guidelines if it determines that such action is appropriate after considering the best interest of the child in light of the evidence, including, but not limited to, the financial resources and needs of the child and both parents, the standard of living the child would have enjoyed had the marriage not been dissolved, and the physical, mental, emotional, and educational needs of the child. 750 ILCS 5/503(a)(2) (West 2010). If a deviation is ordered, “the court’s finding shall state the amount of support that would have been required under the guidelines, if determinable. The court shall include the reason or reasons for the variance from the guidelines.” *Id.* A determination regarding the appropriate amount of child support will be reversed only if the trial court abused its discretion. *In re Marriage of Ackerley*, 333 Ill. App. 3d 382, 394-95 (2002).

¶ 19 In accordance with section 503(a)(2) of the Act (750 ILCS 5/503(a)(2) (West 2010)), the trial court in the present case stated the statutory child support amount as set forth under the guidelines would require respondent to pay 28% of his net monthly income, or approximately \$2,836 per month not including unemployment benefits, and \$3,295 per month including unemployment benefits. The trial court ordered respondent to pay 23% of his net monthly income retroactive to September 1, 2010, which was \$2,706 per month for his time while receiving unemployment benefits and \$2,329.57 for the remainder. In so ordering, the trial court acknowledged that the amount

represented a downward deviation, but found that the deviation was warranted because of the substantial amount of parenting time by the respondent. See *In re Marriage of Phillips*, 244 Ill. App. 3d 577, 594-95 (1993). Petitioner compares the present case to *Phillips*, in which the former wife argued that she should not be liable for child support because she had significant parenting time. See *id.* Petitioner in the present case fails to mention that the *Phillips* court denied the party's contention because it found that the trial court properly allowed a downward deviation from child support guidelines. See *id.* In the present case, the trial court acknowledged that even though the after school parenting time by respondent did not regularly require the payment of any money, it did likely defray costs that could have been incurred by petitioner. The trial court also considered other relevant financial components. These reasons were all valid and a proper uses of the trial court's discretion. See also *Ackerley*, 333 Ill. App. at 394-95. Therefore, because we find no abuse of discretion, we affirm the trial court's decision. See *id.* at 394-95.

¶ 20 Petitioner next contends that the trial court abused its discretion when it awarded maintenance in gross. Petitioner argues that the trial court ignored the standards set forth in section 504 of the Act, and in particular, the lifestyle of the parties and the property awarded to each. See 750 ILCS 5/504 (West 2010). Petitioner asserts that she was involved in child rearing for a duration of the marriage, which allowed respondent to enhance his future earning potential. Respondent counters that the trial court properly utilized its discretion in awarding maintenance.

¶ 21 In *In re Marriage of Freeman*, 106 Ill. 2d 290, 298 (1985), our supreme court found that under the Act, a trial court was authorized to award maintenance in gross if it found it appropriate and just in a particular case. See 750 ILCS 5/504(a) (West 2010). The overriding intent in awarding maintenance in gross is to buoy the receiving spouse's financial security by minimizing the risks

inherent in a periodic maintenance award. See *Brandis v. Brandis*, 51 Ill. App. 3d 467, 471 (1977). Both the form and amount of maintenance to be awarded lie within the discretion of the trial court, and such award will not be reversed absent an abuse of discretion. *Riordan v. Riordan*, 47 Ill. App. 3d 1019, 1023 (1977). Finally, when a party claims the trial court abused its discretion in awarding maintenance, that party bears the burden of showing that the trial court abused its discretion. *In re Marriage of Nord*, 402 Ill. App. 3d 288, 292 (2010) (citing *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005)).

¶ 22 A trial court may grant maintenance in an amount and duration as it deems just, after considering the relevant factors, which include:

“(1) the income and property of each party, including marital property apportioned and non-marital property assigned to the party seeking maintenance;

(2) the needs of each party;

(3) the present and future earning capacity of each party;

(4) any impairment of the present and future earning capacity of the party seeking maintenance due to that party devoting time to domestic duties or having forgone or delayed education, training, employment, or career opportunities due to the marriage;

(5) the time necessary to enable the party seeking maintenance to acquire appropriate education, training, and employment, and to whether that party is able to support himself or herself through appropriate employment or is the custodian of a child making it appropriate that the custodian not see employment;

(6) the standard of living established during the marriage;

(7) the duration of the marriage;

(8) the age and the physical and emotional condition of both parties:

(9) the tax consequences of the property division upon the respective economic circumstances of the parties;

(10) contributions and services by the party seeking maintenance to the education, training, career or career potential, or license of the other spouse;

(11) any valid agreement of the parties; and

(12) any other factor that the court expressly finds to be just and equitable.” 750 ILCS 5/504(a) (West 2010).

¶ 23 We hold that no abuse of the trial court’s discretion occurred. Petitioner argues that the trial court abused its discretion when it awarded maintenance in gross of \$30,000. However, respondent counters, and the record supports, that the trial court did not arrive at this result arbitrarily, but rather took into account all of the factors set out in section 504(a) of the Act in awarding maintenance, including, but not limited to, the prior lifestyle of the parties and respondent’s current unemployment and likelihood of future earning potential. Accordingly, petitioner has failed to meet her burden of establishing an abuse of the trial court’s discretion. See *Nord*, 402 Ill. App. 3d at 292 (citing *Schneider*, 214 Ill. 2d at 173). Therefore, we affirm the trial court’s ruling on this issue.

¶ 24 Finally, petitioner contends that the trial court erred when it ordered both parties to be responsible for paying their own attorney fees. Petitioner argues that respondent’s actions dramatically increased her attorney fees and diminished the marital estate of the parties. Respondent counters that the trial court did not abuse its discretion and that petitioner has proffered no evidence as to the existence of such fees, or their attribution to the custody trial, or that they are outstanding or were paid from marital assets, as opposed to from respondent’s nonmarital assets.

¶ 25 The Act will allow the trial court to order one party to contribute to the other's attorney fees where one party lacks the financial resources to pay them and the other party has the ability to pay. *In re Marriage of Schneider*, 214 Ill. 2d 152, 174 (2005). Section 508(a) of the Act provides in part: "The court from time to time, after due notice and hearing, and after considering the financial resources of the parties, may order any party to pay a reasonable amount for his own or the other party's costs and attorney's fees." 750 ILCS 5/508(a) (West 2010). The allowance of attorney fees in a dissolution case and the proportion to be paid by each party are within the trial court's discretion and will not be disturbed on appeal absent an abuse of that discretion. *In re Marriage of Pylawka*, 277 Ill. App. 3d 728, 735 (1996). A trial court will be found to have abused its discretion when it acted arbitrarily without conscientious judgment, or in the view of all of the circumstances, exceeded the bounds of reason and ignored settled principles of law so that substantial injustice resulted. *In re Marriage of Marsh*, 343 Ill. App. 3d 1235, 1240 (2003).

¶ 26 Petitioner argues that the trial court abused its discretion by arbitrarily ignoring respondent's actions that diminished the marital estate and increased her attorney fees. However, respondent counters, and the record supports, that the trial court did not arrive at this result arbitrarily, but rather the trial court expressly noted that it made all of its rulings based on the "various financial components of the case in conjunction with and in consideration of each other" and it considered "the overall picture of the parties." Accordingly, petitioner has failed to meet her burden of establishing an abuse of the trial court's discretion. See *Pylawka*, 277 Ill. App. at 735. Therefore, we affirm the trial court's decision.

¶ 27 For the foregoing reasons, we affirm the judgment of the circuit court of Lake County.

¶ 28 Affirmed.