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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
DENEEN C. SCHELLE,)	of McHenry County.
)	
Petitioner-Appellee,)	
)	
and)	No. 11-DV-609
)	
THOMAS A. SCHELLE,)	Honorable
)	Mark R. Gerhardt,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion in denying respondent's motion to vacate the dissolution judgment, which was entered in his absence: respondent was on notice of the relevant court dates and simply ignored them, and to order a retrial would prejudice petitioner; (2) without the exhibits introduced at trial, we could not say that the trial court's classification of property was against the manifest weight of the evidence.

¶ 2 Respondent, Thomas A. Schelle, appeals from an order of the circuit court of McHenry County denying his motion to vacate a judgment for dissolution, which was entered following a hearing at which respondent failed to appear. On appeal, respondent argues that the trial court's

denial of his motion to vacate “failed to achieve substantial justice between the parties,” because it denied respondent the opportunity to be heard. He also argues that the court erred in classifying the parties’ home as marital property. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On July 5, 2011, petitioner, Deneen C. Schelle, filed a “complaint” for the dissolution of her marriage to respondent.

¶ 5 On January 20, 2012, an attorney filed an appearance on behalf of respondent and, subsequently, on April 25, 2012, a motion to withdraw.

¶ 6 On June 7, 2012, respondent’s attorney withdrew, and respondent entered a *pro se* appearance. On that same date, the court set the following dates: (1) a pretrial conference date of August 15, 2012, at 11 a.m.; and (2) trial dates of August 27, 2012, and August 28, 2012, at 1:30 p.m.

¶ 7 On August 15, 2012, respondent failed to appear. The court continued the pretrial conference to the morning of August 27, 2012, and entered an order indicating same. The court instructed petitioner’s counsel to mail a copy of the August 15 order to respondent.

¶ 8 On August 27, 2012, respondent failed to appear at the morning pretrial conference. Petitioner’s counsel advised the court that he had sent notice of the date to respondent. As a result of respondent’s failure to appear, the court barred respondent from presenting any exhibits at trial. Respondent failed to appear that afternoon at the bench trial, which commenced at 1:30 p.m. as scheduled. The court heard evidence concerning the parties’ marital and nonmarital property. Eight exhibits were entered into evidence. (They were not made part of the record on appeal.) The exhibits included an appraisal of the marital residence, the parties’ joint tax returns for 2009 and

2010, petitioner's tax returns for 2011, bank records for 2011 and 2012, and valuations for various vehicles.

¶ 9 Petitioner testified as follows concerning the parties' residence. Respondent purchased the house in 1994. They married in 2002. When they got married, they "dismantled the house down to studs and rebuilt the house." Petitioner stated:

"The house was a, um, a cottage sort of (unintelligible). It had three bedrooms, only one bath; and we had, between the two of us, four kids. We had his two children and then my two children. So when we got married we decided to redo the house in 2002, selling my townhouse and then rebuilding that one. Now it's 3,700 square feet, four-bedroom, three-bath home."

She testified that they "doubled the size of the house with the income from my townhouse." When asked about the income from the sale of the townhouse, petitioner stated: "It was over \$50,000 cash that we—and then we got a loan for the balance." She further testified that the appraised value of the rebuilt home was \$533,000 and that the mortgage balance was a little over \$336,000. Throughout the parties' marriage, respondent had paid the mortgage and petitioner had paid the utility bills. In 2010, respondent's income was \$63,000; petitioner's income was \$27,000.

¶ 10 After considering the evidence, the court divided the parties' property. Concerning the house, the court ruled as follows:

"The marital residence is awarded to [respondent] as his property. [Petitioner] will be allowed to remain in the house for up to six months, or earlier should she choose to move out at that time.

During the time when both parties reside in the house, [petitioner] will pay the utilities. [Respondent] will be responsible for the mortgage, including principal, interest, tax and insurance.

[Respondent] will be required to pay 50 percent of the equity in the home, which is the amount of \$98,500. He will do so with payments of no less than \$1,000 per month for the first year, the balance to be paid in full at the expiration of 12 months.

[Petitioner] will execute any quitclaim deed or any other documents necessary to effectuate the transfer of the property upon presentment by [respondent].

[Respondent] will be required to remove [petitioner's] name from any mortgage obligations within six months. In the interim he will indemnify and hold harmless [petitioner].”

¶ 11 The matter was set for entry of judgment on September 10, 2012. On that date, the trial court entered the judgment for dissolution of marriage, which set out its ruling concerning the marital residence. The court found that “any non-marital portion or prior contribution of [respondent] in the marital residence has been commingled and further finds that any equity in the marital residence is now fully marital property in nature.” The court ordered distribution of the equity consistent with its oral ruling at the trial.

¶ 12 On September 26, 2012, respondent filed a motion to vacate the dissolution judgment under section 2-1203 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1203 (West 2012)). Respondent argued that his attorney had withdrawn on June 7, 2012, and that respondent’s failure to appear at the trial was “due to not being familiar with procedure, not receiving proper notice or a copy of the court order and due to obtaining incorrect dates orally from the opposing attorney.”

¶ 13 On November 6, 2012, the court held a hearing on respondent's motion. Respondent (now represented by counsel) argued that he had a meritorious defense and that there would be no prejudice to petitioner. Respondent argued that he did not receive any notices of court dates, due to a problem with getting his mail. On August 27, respondent checked the on-line court system (under the belief that the relevant dates were August 28, 29, and September 4) and found out that the court had already entered an order and set the matter for September 10. Respondent came to court on September 10 but arrived late and learned that the judgment had already been entered. Respondent was unaware that he could have entered the courtroom and asked the court for argument that day. According to respondent, the judgment was not fair and reasonable.

¶ 14 In response, petitioner argued that respondent had shown a lack of respect for the court process since the filing of the petition for dissolution. She argued that the petition was filed in July 2011 and that respondent did nothing until November. When respondent's attorney withdrew in June 2012, respondent filed his own appearance. Petitioner argued that, although respondent was representing himself, he should be held to the same standards applicable to an attorney. Petitioner claimed that, on June 7, respondent was advised of the August 15 pretrial conference. Respondent was handed a copy of the June 7 order, which contained the relevant court dates. Respondent did not appear at the conference on August 15. The court continued the conference to the morning of the trial, on August 27. Petitioner's counsel mailed the August 15 order, continuing the matter to August 27, to respondent that same day. The trial was conducted on August 27 pursuant to the order that was sent to respondent. Petitioner further argued that, although respondent claimed he had a "meritorious defense," "not getting your mail is not a meritorious defense to a divorce proceeding,"

and coming in “at the 11th hour asking to start [the trial] all over again” would be prejudicial to petitioner.

¶ 15 In reply, respondent insisted that he had written down the wrong trial dates and that he did not find out that the dates were incorrect until he checked the on-line system on August 27, when it was too late.

¶ 16 Prior to ruling, the court asked respondent whether he was present in court on June 7, 2012, when the court entered an order setting the pretrial conference for August 15 and the trial for August 27 and 28, 2012. Respondent acknowledged that he was. The court asked respondent whether he had the paper on which he allegedly had written the wrong dates. Respondent responded that he did not; he probably threw it out.

¶ 17 The trial court denied the motion to vacate. The court found that respondent knew about the dates but simply failed to appear.

¶ 18

II. ANALYSIS

¶ 19 We consider first whether the trial court erred in denying respondent’s motion the vacate the dissolution judgment. According to respondent, the trial court’s ruling “failed to achieve substantial justice between the parties,” because it denied respondent the opportunity to be heard. Petitioner responds that, because respondent’s failure to appear was a result of a lack of diligence on respondent’s part, the court properly denied the motion. We agree with petitioner.

¶ 20 Under section 2-1203 of the Code (735 ILCS 5/2-1203 (West 2012)), in a case tried without a jury, a party may, within 30 days after judgment, file a motion for a rehearing or a retrial, for modification or vacation of the judgment, or for other relief. One purpose of a section 2-1203 postjudgment motion is to alert the trial court to errors it has made and to afford an opportunity for

their correction. See *In re Marriage of King*, 336 Ill. App. 3d 83, 87 (2002). Another purpose is to bring to the court's attention newly discovered evidence that was not available at the time of trial, changes in the law, or errors in the court's previous application of existing law. See *Korogluyan v. Chicago Title & Trust Co.*, 213 Ill. App. 3d 622, 627 (1991). Whether to grant a motion under section 2-1203 is within the discretion of the trial court. *Mrysuk v. Hoyos*, 228 Ill. App. 3d 860, 863 (1992). "Whether a trial court has abused its discretion turns on whether the court's refusal to vacate 'violates the moving party's right to fundamental justice and manifests an improper application of discretion.'" *Mrysuk*, 228 Ill. App. 3d at 863 (quoting *Harris v. Harris*, 45 Ill. App. 3d 820, 821 (1977)). "We may find an abuse of discretion only where the trial court acted arbitrarily such that no reasonable person would take the position it adopted." *Jacobo v. Vandervere*, 401 Ill. App. 3d 712, 715 (2010).

¶ 21 Here, respondent maintains that the trial court's denial of his motion to vacate was "unfair" and "failed to achieve substantial justice between the parties," because it denied respondent the opportunity to be heard on the issue of whether the house was marital property. We find that the court's ruling was not an abuse of discretion. Although respondent claims that he did not receive the August 15 notice sent by petitioner's counsel and that he wrote down the wrong court dates, the record shows that the relevant dates (August 15, 27, 28) had been set on June 7, when respondent was, by his own admission, present in court. Thus, it is clear that he was on notice of the relevant dates but simply ignored them. Furthermore, we reject respondent's argument that requiring petitioner to go to trial (again) on the issue of the marital home would not result in prejudice, as requiring petitioner to do so would result in additional litigation expenses and time. Therefore, we cannot conclude that the denial of respondent's motion to vacate was an abuse of discretion.

¶ 22 We next consider respondent's claim that the trial court's finding that the parties' residence was marital property was against the manifest weight of the evidence. According to respondent, because he purchased the residence prior to the marriage, under section 503(a)(5) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503(a)(5) (West 2010)) the home was nonmarital property and, as such, the court erred in awarding a portion of the equity to petitioner.

¶ 23 As an initial matter, we note that respondent's argument completely ignores section 503(c)(2) of the Act, which provides as follows:

“(c) Commingled marital and non-marital property shall be treated in the following manner, unless otherwise agreed by the spouse:

(2) When one estate of property makes a contribution to another estate of property, or when a spouse contributes personal effort to non-marital property, the contributing estate shall be reimbursed from the estate receiving the contribution notwithstanding any transmutation; provided, that no such reimbursement shall be made with respect to a contribution which is not retraceable by clear and convincing evidence, or was a gift, or, in the case of a contribution of personal effort of a spouse to non-marital property, unless the effort is significant and results in substantial appreciation of the non-marital property. Personal effort by a spouse shall be deemed a contribution by the marital estate. The court may provide for reimbursement out of the marital property to be divided or by imposing a lien against the non-marital property which received the contribution.” 750 ILCS 5/503(c)(2) (West 2010).

Here, petitioner's testimony established that petitioner made significant contributions to the residence. She stated that they "doubled the size of the house with the income from [her] townhouse." She testified that she received \$50,000 from the sale of her townhouse and that they "got a loan for the balance." She further testified that, throughout the parties' marriage, respondent had paid the mortgage and she had paid the utility bills. The evidence certainly seems to support the court's ruling.

¶ 24 In any event, we find that we are unable to address this issue, due to respondent's failure to provide a sufficient record on appeal. It is the appellant's burden to provide the reviewing court with a sufficiently complete record to allow for meaningful appellate review. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Indeed, Illinois Supreme Court Rule 321 (eff. Feb. 1, 1994) provides that the record on appeal must contain the entire common-law record, including "documentary exhibits offered and filed by any party." In the absence of a sufficiently complete record, a reviewing court will resolve all insufficiencies against the appellant and will presume that the trial court's ruling had a sufficient legal and factual basis. *Foutch*, 99 Ill. 2d at 391-92.

¶ 25 In this case, the trial court's ruling on this issue was made only after considering a number of exhibits entered into evidence at trial. These exhibits included an appraisal of the marital residence, the parties' joint tax returns for 2009 and 2010, petitioner's tax returns for 2011, and bank records for 2011 and 2012, any of which might have pertained to this issue. None of these exhibits, however, have been included in the record before this court. Without the benefit of all the evidence, we have no basis upon which to evaluate the trial court's decision, and we must presume that this decision had a sufficient legal and factual basis. *Lah v. Chicago Title Land Trust Co.*, 379 Ill. App.

3d 933, 938-39 (2008) (trial court ruling upheld, pursuant to *Foutch*, where appellant failed to include trial exhibits in the record on appeal); *In re K.S.*, 317 Ill. App. 3d 830, 832-33 (2000) (same).

¶ 26

III. CONCLUSION

¶ 27 For the reasons stated, we affirm the order of the circuit court of McHenry County denying respondent's motion to vacate the judgment of dissolution.

¶ 28 Affirmed.