

No. 1-12-3353

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF:)	Appeal from the
JASON ZIEGLER,)	Circuit Court of
)	Cook County
Petitioner-Appellant,)	
)	No. 09 D 8497
and)	
)	
ELISA MARIA ZIEGLER,)	Honorable
)	Nancy J. Katz,
Respondent-Appellee.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Connors and Justice Hoffman concurred in the judgment.

ORDER

¶ 1 *Held:* Where appellant alleged error with respect to value of savings account included in marital dissolution judgment, the record was insufficient to facilitate review of the judgment or denial of appellant's subsequent motion to vacate where record did not include any transcript from proceedings at entry of judgment, memoranda in support of motion to vacate, or transcript from hearing on motion to vacate.

¶ 2 This appeal arises from the trial court's July 26, 2012 judgment dissolving appellant's marriage to his former wife and dividing their marital assets (the Judgment), as well as from the denial of appellant's motion to vacate, modify or reconsider the Judgment. Appellant argues

that: (1) the trial court's enforcement of the parties' agreement to divide marital property using a valuation date prior to the date of dissolution is inconsistent with the recent Illinois Supreme Court decision *In re Marriage of Mathis*; (2) that the Judgment entered by the trial court contains a mathematical error regarding the value of a savings account which resulted in appellant not receiving his equitable share of the marital property. For the following reasons, we affirm the Judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 Petitioner-appellant Jason Ziegler (Jason) and respondent-appellee Elisa Maria Ziegler (Elisa) were married in Lockport, Illinois on June 23, 2001. They had one child during the marriage, born in February 2005. The parties separated in May 2009, when Jason moved out of the marital residence. Jason filed a petition for dissolution of the marriage on September 9, 2009, citing irreconcilable differences. Elisa answered the petition on October 26, 2009. Elisa's answer admitted the grounds for dissolution, requested joint custody over the parties' child, and sought an equitable apportionment of marital assets. A joint custody agreement for the child, which is not at issue in this appeal, was approved by the trial court in July 2011.

¶ 5 Although the parties had informally discussed an equitable division of property in 2009, the parties did not finalize any written agreement regarding distribution of the marital assets. On June 5, 2012, Elisa filed a counter petition for dissolution of marriage which alleged that "[t]he parties entered into an oral settlement agreement on or about June 19, 2009 involving the division of all marital property as of that date" and requested that the court "find the parties' oral agreement fair and reasonable and effectuate that agreement."

¶ 6 Trial regarding the marital property issues occurred on June 5, 2012, at which both Jason and Elisa testified. Jason testified concerning the value of various marital assets, accounts, and

investments, including a joint ING savings account which is at issue in this appeal. Jason testified that at the time of the 2009 separation, the ING account contained \$32,000. Jason testified that shortly after the separation he and Elisa agreed to evenly divide the cash in the account. Elisa thus received \$16,000 and Jason maintained the account with the remaining \$16,000. Notably, although the supplemental record on appeal includes an ING account statement reflecting activity between January 2010 and March 2012, the record is devoid of any ING statements reflecting account activity in 2009 or any other documentary evidence of the \$16,000 transfer to Elisa.

¶ 7 Jason testified that near the time of the division of the ING account, he and Elisa had discussed how to divide their remaining marital assets. Jason testified that they initially attempted to work out a "50/50" division of their other assets in order to save on legal costs. To that end, Jason created a spreadsheet listing various investments and other marital assets (excluding the ING account) held by each spouse and calculating the amount needed to reach an equal division of the marital property. The spreadsheet Jason sent to Elisa in June 2009 calculated that she would need to pay him \$17,718 to equalize their shares. Jason testified that Elisa rejected this proposal, as well as a revised proposal in July 2009 that lowered the equalizing amount to be paid by Elisa. Jason testified that no agreement was reached with respect to division of marital assets.

¶ 8 Elisa corroborated Jason's testimony that they had divided the ING account at the time of their separation in 2009, stating: "We took our cash of \$32,000, and we separated the cash. I proceeded to open a checking account and a savings account, and I took the \$16,000 cash that he gave me and put it into that checking account." Elisa recalled receiving spreadsheets from Jason regarding the division of other marital assets. Although she did not agree to the specific figures

proposed in Jason's spreadsheets, she testified that she and Jason nonetheless had an understanding "[t]hat everything that we had would be split 50/50."

¶ 9 Elisa testified that although she agreed in principle to an equal division, she had not accepted the proposals offered in Jason's spreadsheets due to her concerns about how to split certain assets, particularly her 401(k) account, without legal advice. She also testified that she had wanted to settle their child custody arrangement before finalizing their division of assets. Nonetheless, she believed she and Jason had agreed to equally divide their marital assets applying the property's value as of June 2009.

¶ 10 In closing arguments, Jason's counsel contended that no agreement had been reached and thus the marital assets should be valued as of the 2012 trial. Elisa's counsel argued that there was an agreement to divide assets based on their value in June 2009. In its findings, the trial court adopted Elisa's position and stated its belief that "there was a meeting of the minds between the parties" in 2009 to divide marital assets evenly, even if it was not clear how this division would be implemented. Thus, the court expressly found "an oral agreement to split the assets and split them at the time of their separation."

¶ 11 After stating its findings, the court directed the parties to create a balance sheet to reflect a "50/50 division" of marital assets based on the 2009 oral agreement. The court instructed the parties' attorneys to "redo their balance sheet and enter a judgment that splits the assets and trues it up using probably the 401(k) and the money from the refinance of the [marital] home as the equalizers." The court advised the parties that they should notify the court if they could not reach agreement: "I think you can probably agree on the balance sheet. If not, I will take that under advisement and you can both present your balance sheets to the Court." The record does not indicate that either party submitted a balance sheet to the court prior to the entry of judgment.

¶ 12 On June 29, 2012, approximately three weeks after trial, Jason filed a motion claiming that Elisa's counsel had not yet provided a draft judgment to Jason's counsel. On July 10, the court ordered Elisa to send Jason a "proposed MSA [marital settlement agreement] with 2 solutions for equalizing assets." The order scheduled a status report for July 26, 2012 and specified that "[i]f parties cannot agree, Judge Katz to determine how to equalize."

¶ 13 The record does not indicate whether Elisa's counsel provided a draft marital settlement agreement to Jason prior to July 26, 2012. Nonetheless, a judgment for dissolution of marriage incorporating a Marital Settlement Agreement (the MSA) was entered on that date. The Judgment stated that the MSA governed "the respective rights of each party in and to the property, income or estate which either of them now owns or may hereafter acquire, including a division of all marital and non-marital property, and other matters, which agreement has been presented to this Court for its consideration." The Judgment provides that the MSA "was entered into freely and voluntarily between the parties, has received the approval of this Court," and "ought to be fully incorporated into this Judgment." Elsewhere the Judgment reiterates that "all of the provisions of [the MSA] are expressly ratified, confirmed, approved and adopted as the Orders of this Court."

¶ 14 The MSA, also dated July 26, 2012, is contained within the Judgment. The recitals to the MSA state that each of the parties "is conversant with all the wealth, property, estate and income of the other and that each has been fully informed of his and her respective rights in the premises." The recitals also note that both parties were advised about their right to conduct discovery "for the purpose of ascertaining all assets and financial information, and that both have exercised said right with respect to extensive written and oral discovery."

¶ 15 Article VII of the MSA, entitled "Property Settlement," states that:

"In May 2009, the parties divided all of the cash accounts and each took a portion of the joint credit card debt. The parties agree that all cash and investment accumulated since that date by either party shall remain that party's property ***. As to the aforementioned division and as to the division of the remaining assets, the parties accept such division as the final, complete, and equitable distribution of the marital property."

¶ 16 Article VII of the MSA includes a chart listing "the parties' remaining marital assets and investments" with columns stating each asset and its "Value as of Separation (May 2009)" and indicating whether each asset is held by Elisa or Jason. The sums of the asset values in each of Elisa and Jason's columns are calculated, along with a "Cash to Balance" figure representing the amount that must be transferred to equalize the division of the marital assets. The MSA totals \$75,000 in assets held by Elisa and \$61,706.74 held by Jason, resulting in the "Cash to Balance" figure of \$6,646.63¹ to be paid by Elisa to Jason to reach an equal division.

¶ 17 Notwithstanding Article VII's statement that "[i]n May 2009, the parties divided all of the cash accounts," the chart of marital assets contains an entry labeled "ING" with \$26,091 listed in the "Value as of Separation (May 2009)" column. This is the amount which is included in totaling the marital assets held by Jason; none of the ING account is assigned to Elisa. It is unclear from the record where this figure originated and whether it is the value of the account

¹ It appears that the chart within MSA originally provided for \$4,146.63, but handwritten notes strike this amount and insert the \$6,636.63 figure. The chart includes several additional handwritten edits and notations, which according to Jason's brief, reflect changes made by the trial court on July 26, 2012. Elisa's brief does not dispute that these handwritten changes were made by the court. None of the handwritten changes purports to change the value assigned to the ING account at issue.

which both parties testified was worth \$32,000. There is no transcript or record of proceedings from July 26, 2012 to indicate whether the \$26,091 figure was discussed with counsel or the court on that date. The parties' appellate briefs also make no attempt to explain the origin of this number or how it was incorporated in the MSA.

¶ 18 However, the \$26,091 value does appear in an undated "Pre-Trial Fact Sheet," marked as Petitioner's Exhibit 18 and included in the supplemental record on appeal. That fact sheet indicates that it was drafted by Elisa's counsel, although it is unsigned. Like the MSA, the Pre-Trial Fact Sheet states that as of May 2009, "the parties divided all of the cash accounts." The Pre-Trial Fact Sheet also contains a chart titled "Agreed Division of Marital Assets" that resembles the chart within Article VII of the MSA, including a column for each asset's "Value as of Separation (May 2009)." The chart in the Pre-Trial Fact Sheet, like the MSA, lists an ING account with a value of \$26,091 and indicates that this amount was held by Jason. Nevertheless, the parties' appellate briefing inexplicably fails to mention the Pre-Trial Fact Sheet or otherwise attempt to explain the origin of the \$26,091 figure or why it was included in the MSA and Judgment.

¶ 19 On July 27, 2012, the day following entry of the Judgment incorporating the MSA, Jason filed a motion to vacate, modify or reconsider (Motion to Vacate). Jason has not included that motion or any supporting memoranda in the appellate record. The record does include an August 1, 2012, "Motion to Correct Scrivener's Error" filed by Jason, which states that the Motion to Vacate inadvertently referred in some instances to the Petitioner (Jason) rather than Respondent (Elisa). However, the arguments of the Motion to Vacate are not specified in his brief on appeal.

¶ 20 On August 15, 2012, the court directed Elisa to respond to the Motion to Vacate. The court set a hearing date of October 16, 2012, noting that Jason would have 14 days to file a reply.

Elisa filed her response on October 9, 2012, which contended that Jason had not previously raised any of the issues set forth in the Motion to Vacate:

"Following the June 5 trial, counsel for ELISA drafted a Judgment for Dissolution of Marriage and sent the Judgment to counsel for JASON. Counsel for JASON notified counsel for ELISA about several issues in connection with the wording in the Judgment, including how the payout to JASON would be made. On July 26, 2012, the parties, through their counsel, appeared in court to fully and finally resolve those issues and the Judgment for Dissolution of Marriage was entered. At no point did JASON raise any of the purported 'issues' outlined in his Motion to Vacate, Modify or Reconsider until July 27, 2012 – one day after the Judgment was entered."

Elisa's response further argued that: "This Court made no error in entering the Judgment, nor does JASON point to one. He is, again, simply requesting a 'do-over.' "

¶ 21 Elisa's response likewise does not shed much light on the substance of Jason's contentions in the Motion to Vacate. At one point the response refers to the ING account, stating: "ELISA admits that the trial exhibits did not include any statements from any ING account. Except as so stated, ELISA denies the allegations contained in paragraph 5 as they are conclusions and there is no evidence whatsoever to support the conclusions as to what the parties intended." Elisa's response elsewhere denied any error "in the computation of the marital portion of Respondent's 401(k)." Accordingly, Jason's contentions in the Motion to Vacate are unclear from Elisa's

response or any other source. Moreover, the record does not contain any reply to Elisa's response filed by Jason in support of his motion.

¶ 22 On October 16, 2012, the court held a hearing and denied the Motion to Vacate. No transcript or report of proceedings from that hearing is included in the record on appeal, although the court's order states that counsel for both parties were present. The order contains only a single sentence of findings unrelated to the ING account, stating: "Application of the Hunt formula to calculate the marital portion of Respondent's 401k is appropriate." The trial court denied the Motion to Vacate without further elaborating or mentioning any other issues raised at the hearing.

¶ 23 Jason appealed from the July 26, 2012 Judgment, as well as from the denial of the Motion to Vacate. Jason argues on appeal that we must consider the impact of the Illinois Supreme Court's decision in *In re Marriage of Mathis*, decided during the pendency of this appeal, regarding the effective valuation date for assessing marital property in his dissolution action. Jason also argues that the trial court committed "a judicial mathematical error in failing to consider that [the] parties had previously divided [the] ING savings account," which resulted in Jason not receiving his just division of the marital estate.

¶ 24 ANALYSIS

¶ 25 We determine the following issues: (1) Whether the Illinois Supreme Court's holding in *In re Marriage of Mathias* applies to the facts of this case; (2) Whether the record is sufficient for us to review the alleged trial court error in entering the Judgment incorporating the \$26,091 value for the ING account; and (3) Whether the record is sufficient for us to review whether the trial court erred in denying Jason's Motion to Vacate.

¶ 26 First, we address Jason's argument that we must consider whether the Supreme Court of Illinois decision *In re Marriage of Mathis*, 2012 IL 113496, applies to the facts of this case. In that decision, the Illinois Supreme Court held in response to a certified question that in a bifurcated divorce proceeding, the appropriate date for valuation of marital property is the date of the dissolution.

¶ 27 At the outset, we note that Jason's appeal does not dispute the trial court's finding that the applicable valuation date was the parties' 2009 separation. Indeed, Jason's brief states that "[e]xcept for the mathematical error asserted" concerning value of the ING account, he "has no quarrel with the court's determination of an equal division." In any case, *Mathis* does not apply to the facts here. The question certified to our supreme court in *Mathis* was:

"In a bifurcated dissolution [of marriage] proceeding, when a grounds judgment has been entered, and when there is a lengthy delay between the date of the entry of the grounds judgment and the hearing on ancillary issues, is the appropriate date for valuation of marital property the date of dissolution or a date as close as practicable to the date of trial of the ancillary issues?" 2012 IL 113496, ¶ 1.

Thus, the *Mathis* holding was expressly limited to bifurcated proceedings. The divorce proceedings in this case, however, were not bifurcated, and there was no delay between the judgment of dissolution and the division of marital property. Although the parties separated in 2009, the marriage was not dissolved until July 2012, shortly after trial on the marital property issues. The Judgment dissolving the marriage was simultaneous with and incorporated the marital property distribution set forth in the MSA, including the value of the ING account that is

the subject of the alleged property division error. Thus, the holding of *Mathis*, which was expressly limited to bifurcated dissolution proceedings, does not apply to the proceedings here.²

¶ 28 Jason next claims that the trial court erred with respect to the valuation of the ING account contained in the MSA, arguing that the court did not consider the parties' division of the cash from the account in 2009. Jason's brief says he has "no quarrel with the equal division of the marital estate" but contends that the Judgment's "failure to include the correct amount in the ING savings account that was previously divided" resulted in Jason receiving less than 50 percent of the marital property.

¶ 29 At the outset, we note that our review is made difficult by the fact that Jason's appellate brief fails to explain his position as to the "correct amount" for the ING account, or what he believes the Judgment's final "Cash to Balance" figure should be.³ Jason does not attempt to explain how the ING account should have been addressed (if at all) in the MSA. Citing testimony that the parties equally divided \$32,000 from the account, Jason's brief states that "[t]he trial court in listing [the] ING account showed that JASON received \$26,091, the entire

² Even assuming that *Mathis* applied beyond bifurcated proceedings, there is no indication that it would preclude enforcement of the parties' agreement to divide marital property valued as of their 2009 separation. The court in *Mathis* did not explicitly decide whether parties may agree to a date of valuation other than the date of dissolution. However, we note that the *Mathis* court approvingly quoted the special concurrence in *In re Marriage of Awan*, 388 Ill. App. 3d 204 (2009), that: "[a]bsent an express agreement that another date will control valuation, the parties could have avoided many difficulties in this case by recognizing the court would be required *** to measure all property values as of *** the date of the judgment of dissolution." 2012 IL 113496 at ¶ 32 (emphasis added) (quoting *In re Marriage of Awan*, 388 Ill. App. 3d at 220 (J. Wright, concurring)). Thus, *Mathis* does not necessarily preclude enforcement of an express agreement to an alternative valuation date.

³ Jason's brief notes that he "testified that he should have received \$17,718." Yet the cited testimony does not refer specifically to the ING account, but represented Jason's initial calculation (according to the first spreadsheet he sent to Elisa in 2009) of what he believed she owed him to equalize their division of marital property.

account when he only received one half of the account." However, Jason does not specify whether his position is that the ING account value in the MSA should be half of the \$26,091 figure, half of the \$32,000 that the parties allegedly split in 2009, or another value. Jason likewise fails to state whether he believes any portion of the ING account should be attributed to the marital assets held by Elisa. Nor does Jason argue that the ING account should be removed entirely from the list of marital assets in the MSA, a position which would appear to be consistent with the parties' testimony and Article VII's statement that the parties had completed their division of the cash in the ING account at the time of their separation in 2009.

¶ 30 Notwithstanding the lack of clarity in Jason's brief, it is the deficiencies in the appellate record that are dispositive of this appeal. As the appellant asserting error, Jason bears the burden of providing a sufficient record for us to assess the trial court proceedings. This principle is expressly stated in both the Supreme Court Rules and our case law. The Illinois Supreme Court "has long held that in order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman*, 195 Ill. 2d 426, 431 (2001) (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)); see also *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005) ("This court has recognized that to support a claim of error, the appellant has the burden to present a sufficiently complete record").

¶ 31 The Illinois Supreme Court Rules set forth how the appellant must preserve the record. Rule 321 provides that, absent a stipulation or court order to the contrary, "[t]he record on appeal shall consist of the judgment appealed from, the notice of appeal and the entire original common law record." Ill. S. Ct. R. 321 (eff. Feb. 1, 1994). The rule explains that "[t]he common law record includes every document filed and judgment and order entered in the cause and any documentary exhibits offered and filed by any party." *Id.*

¶ 32 Rule 321 also provides that "[t]he record on appeal shall also include any report of proceedings prepared in accordance with Rule 323." *Id.* In turn, Rule 323(a) requires the report of proceedings to "include all the evidence pertinent to the issues on appeal." Ill. S. Ct. R. 323(a) (eff. Sept. 23, 1996). Pursuant to Rule 323(c), "[i]f no verbatim transcript of the evidence of proceedings is obtainable the appellant may prepare a proposed report of proceedings from the best available sources, including recollection." Ill. S. Ct. R. 323(c) (eff. Sept. 23, 1996). These rules are requirements, not guidelines. See *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 241 (2007) ("Rule 323, like the other supreme court rules governing appeals, is not a mere suggestion" but "has the force and effect of law and is binding on litigants as well as the courts").

¶ 33 Our supreme court has recognized that "[a]n issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding." *Corral*, 217 Ill. 2d at 156-57 (affirming denial of motion to transfer since "we do not know what evidence or arguments were presented at that hearing" and thus "we cannot review the claimed error to determine whether the trial court's factual findings were against the manifest weight of the evidence"); see also *Webster*, 195 Ill. 2d at 432 ("[w]here the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding.").

¶ 34 As the reviewing court cannot speculate as to the proceedings below, we will assume that the trial court acted appropriately where the record is insufficient to review its reasoning. See *Corral*, 217 Ill. 2d at 157 ("Without an adequate record preserving the claimed error, the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law."). Accordingly, "[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* (quoting *Foutch*, 99 Ill.

2d at 392); see also *In re J.D. and M.G.*, 332 Ill. App. 3d 395, 401 (2002) ("Without knowledge of the evidence or arguments at trial, or the basis for the trial court's decision, the reviewing court presumes that the trial court's decision was proper."). Likewise, when the appeal concerns denial of a motion and "the record fails to 'shed light on the court's reasons' for denying the motion, we must conclude that the trial court properly based its decision on the law and the evidence." *In re Marriage of Epting*, 2012 IL App (1st) 113727, ¶ 36 (quoting *In re Marriage of Thomsen*, 371 Ill. App. 3d at 242).

¶ 35 Here, as the record does not clarify how the \$26,091 figure was determined for inclusion in the MSA, we are foreclosed from reviewing the merits of Jason's appeal from the Judgment incorporating that agreement. Although the trial court specifically advised the parties that they could submit separate balance sheets if there were any disputed asset values, the record does not indicate that Jason ever submitted any balance sheet with an alternate value for the ING account. In fact, the record contains no evidence of any discussion regarding the ING account between the court's findings after trial on June 5, 2012, and the entry of judgment on July 26, 2012. The sole reference in the record to the \$26,091 figure, other than the final MSA, appears in the undated, unsigned Pre-Trial Fact Sheet included in the supplemental record. Yet, there is no mention of this Pre-Trial Fact Sheet either in the record or in the parties' appellate briefs regarding how it may have affected the Judgment. Absent any foundation in the record, we cannot assume or speculate as to how this document may have been used.

¶ 36 Moreover, although the July 26, 2012 Judgment contains handwritten notations, indicating the parties and the court actively discussed the terms of the MSA, the record contains no transcript of proceedings from that date. Thus, even if the ING account was in fact discussed at that time, there is nothing to indicate the substance of the discussion. There is likewise

nothing in the record to suggest that Jason's counsel ever notified the court of any concern or objection to the MSA's stated \$26,091 value of the ING account prior to entry of the Judgment. We are thus left without a basis to tell what arguments Jason may have made, if any, prior to the entry of Judgment. Since Jason is the appellant and he has presented nothing to the contrary, we must infer that he did not dispute the \$26,091 figure prior to entry of the Judgment which he now challenges.

¶ 37 Although Jason moved to vacate, modify, or reconsider the Judgment the very next day, the record is likewise deficient with respect to the content or arguments presented in his Motion to Vacate. As Jason failed to include his motion or supporting arguments in the record on appeal, we simply cannot tell what issues he raised or arguments he made. Although Elisa's response to the motion suggests Jason asserted some error with respect to the ING account, her filing likewise does not reveal any specific arguments or any evidence which he may have cited to assert a value other than the \$26,091 shown on the balance sheet and incorporated into the Judgment.⁴ Moreover, the trial court gave Jason the right to file a reply in support of his motion. Yet, if Jason exercised that right, he has failed to include that reply in the record on appeal.

¶ 38 Jason has compounded the failure to include the briefing in support of his post-trial motion with the lack of a transcript or report of proceedings for the October 16, 2012 hearing on his Motion to Vacate. Additionally, the court order denying the motion does not suggest that anything about the ING account was ever argued, let alone ruled upon, at that hearing.

⁴ Jason argues that the ING statement included in the supplemental record, reflecting account activity between January 2010 and May 2012, somehow corroborates his testimony about the parties' prior division of the account in 2009. Inexplicably, Jason failed to supplement the record with an ING statement showing account activity during 2009, let alone any record of the claimed \$16,000 transfer to Elisa. As the account statement reflects only activity subsequent to the pertinent 2009 valuation date, it does not support Jason's position.

¶ 39 In its most basic form, Jason's issue with the court's Judgment is based on what he sees as the failure of the trial court to give him credit for the \$16,000 which represents half of the original amount in the ING account and which the parties claim he paid to Elisa. That position leads to the inference that the \$32,000 in the ING account was divided by the parties prior to the Judgment and should never have been included in the tally of assets from which the court made its allocation at the time of entry of the Judgment. However, this argument is never clearly made in Jason's brief on appeal and nothing in the record provides a basis to vacate the court's Judgment which uses the figure of \$26,091 as the value of the ING account for purposes of the allocation.

¶ 40 Typically, we would assess distribution of marital assets under an abuse of discretion standard. See *In re Marriage of Heroy*, 385 Ill App. 3d 640, 661 (2008) ("As with maintenance awards, decisions concerning the distribution of marital property lie within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of that discretion."). However, the insufficient record prevents us from engaging in that review and compels us to affirm the trial court.

¶ 41 As discussed, we acknowledge that the MSA's inclusion of the \$26,091 amount for the ING account appears to be at odds with the testimony at trial that the parties had evenly split a sum of \$32,000 from the account at the time of their 2009 separation. Notwithstanding the apparent conflict between the testimony and the Judgment with respect to the ING account, the record does not provide sufficient basis for us to find error with respect to the entry of the Judgment incorporating the MSA. There is no explanation regarding how the court determined that the \$26,091 amount should be included, and the parties' briefing sheds no light on this question. We are compelled to make any inferences arising from the gaps in the record against

Jason as the appellant. Thus, we must infer that, as set forth in the MSA, Jason had fair opportunity to engage in discovery regarding the parties' marital assets, including the ING account. Likewise, we must infer that, as instructed by the trial court, Jason's counsel had the opportunity to confer with Elisa's counsel in drafting the chart of marital assets that was incorporated into the Judgment, and that Jason could have submitted his own balance sheet to the court if he disputed any asset value. As there is simply no indication that Jason submitted his own calculation or otherwise raised any objection with the court regarding the ING account prior to entry of the Judgment, we must infer that he accepted the figures incorporated in the Judgment.

¶ 42 Similarly, absent a transcript from the July 26, 2012 proceedings or any other indication of how the \$26,091 figure was assessed by the trial court, we must presume that its inclusion in the Judgment was legally and factually supported. Indeed, we have previously held that an appellant's failure to provide a transcript or report of proceedings precludes us from disturbing findings in a dissolution proceeding. See *In re Marriage of Thomsen*, 371 Ill. App. 3d 236, 246 (2007) (affirming order directing ex-husband to fund daughter's college-related expenses and barring him from learning the name of the college since "[w]ithout a record of the [hearing] proceedings, we have no reason to conclude the trial court did not properly base its judgment on the law and the evidence") (citing *Foutch*, 99 Ill. 2d at 391-92)). Here, too, we lack a transcript or report of proceedings that would enable us to review the factual basis or legal reasoning for incorporating the \$26,091 figure in the Judgment, notwithstanding its apparent tension with prior trial testimony. As we cannot engage in speculation to assign error, we must presume that the trial court's inclusion of this value in the MSA and Judgment was appropriate.

¶ 43 The same reasoning compels us to affirm the trial court's denial of Jason's motion to vacate, modify, or reconsider the Judgment. As Jason failed to include his Motion to Vacate or supporting arguments in the record on appeal, we cannot tell what arguments he presented or what evidence he may have cited. Likewise, we are without any record of proceedings from the trial court's October 2012 hearing on Jason's Motion to Vacate. Indeed, we cannot even assume that Jason's counsel actually presented any argument with respect to the ING account at that hearing.

¶ 44 Thus, as with the entry of Judgment, we are also bound to presume that the trial court's denial of Jason's Motion to Vacate was supported by the law and facts. Our supreme court's decision in *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), is particularly applicable, as that case also concerned an appeal from the denial of appellant's motion to vacate a judgment. In that case, although "it seem[ed] from the court's order of denial that evidence was presented" at the hearing, the appellant failed to include a transcript or report of proceedings, nor did appellant submit a bystander's report or an agreed statement of facts pursuant to Rule 323. *Id.* at 391-92. Our supreme court concluded that "[a]s there [was] no transcript of the hearing on the motion to vacate here, there is no basis for holding that the trial court abused discretion in denying the motion." 99 Ill. 2d at 392. The same result is warranted here, and thus we affirm the trial court's denial of Jason's Motion to Vacate.⁵

⁵ We note the facts here are distinguishable from those in *In re Marriage of Epting*, where we found the record sufficient to review the denial of a motion to reconsider in a dissolution proceeding, notwithstanding the lack of a hearing transcript, "[s]ince the record includes [appellant's] original motion to vacate, his *pro se* motion to reconsider, and the trial court's order setting forth its reason for denying the motion to reconsider." 2012 IL App (1st) 113727, ¶ 37. Here, the record is much less complete. Not only did Jason fail to provide a transcript of the hearing on his post-trial motion, he failed to include any briefing in support of his motion.

¶ 45 The deficiencies in the appellate record independently preclude us from finding error in the Judgment's valuation of the ING account. However, we also address Jason's reliance on our decision in *In re Marriage of Gringas*, 86 Ill. App. 3d 14 (1980), where we permitted the correction of an arithmetic error in a dissolution judgment. In *Gringas*, the trial court's judgment incorporated a settlement that called for "an equal division" of marital property. *Id.* at 15. The settlement agreement calculated that the marital assets held by the wife were worth \$15,500 more than those held by the husband; yet the judgment erroneously awarded the husband \$15,500, when the amount to equalize the parties' assets should have been only half that amount, or \$7,750. *Id.* at 17. Our decision explained that "[a] trial court retains jurisdiction to enter a *nunc pro tunc* order correcting a final order or judgment," but that "this power *** may not be used to supply omitted judicial action, to correct judicial error, or to cure a jurisdictional defect." *Id.* at 16. We permitted the correction in *Gringas* since "it [was] clear *** the trial court intended to provide for an equal division of the property" and that "an arithmetical error was made in computing the amount needed to equalize the equity amounts." *Id.* at 17. Such a mistake "was not the result of judicial reasoning," but "constituted another form of clerical error." *Id.*

¶ 46 Jason's claim here is distinguishable. *Gringas* involved a purely mathematical mistake, and there was no claim that any marital asset had been incorrectly valued. In contrast, here, Jason does not allege that the court missed any mathematical step in calculating the division of marital assets. Rather, he disputes the \$26,091 value ascribed to the ING account that was incorporated into the MSA's calculation. Jason's appeal thus does not assert "clerical error," but amounts to a factual dispute as to the account's value either at the parties' 2009 separation or upon the entry of the Judgment.

¶ 47 Moreover, the *Gringas* decision stated that such a *nunc pro tunc* correction "must be based on some note, memorandum, or memorial paper" in the record, but "*cannot be based on the recollection of the trial judge or other persons.*" (Emphasis added.) *Id.* at 16. Yet the sole basis for Jason's assertion of an alternate value for the ING account is the recollection of the parties as recounted in their trial testimony. Jason failed to present any ING account statement from the time period in question or any other record that would establish an account value other than that stated in the MSA. Thus, *Gringas* does not support Jason's argument for reversing the Judgment. Rather, in light of the deficiencies in the record on appeal, we affirm both the trial court's July 26, 2012 Judgment as well as the denial of Jason's motion to vacate, modify, or reconsider.

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.