FOURTH DIVISION
April 10, 2014

No. 1-13-0434

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JOHN M. O'REILLY,	)	Appeal from the
	)	Circuit Court of
Petitioner/Counter- Respondent-Appellee,	)	Cook County
	)	
v.	)	No. 08 D 1083
	)	
HEATHER STERN,	)	Honorable
	)	Celia G. Gamrath,
Respondent/Counter- Petitioner-Appellant.	)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Presiding Justice Howse and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying the respondent's petition to vacate a final judgment for dissolution of marriage and its incorporated agreements. The respondent failed to supply an adequate record where it contained no transcript of the evidentiary hearing on her petition, nor did respondent provide a bystanders report or an agreed statement of facts. We affirm the trial court's judgment.

¶ 2 Respondent/counter-petitioner, Heather Stern (Heather), *pro se*, appeals the trial court's January 4, 2013 order denying her petition to vacate a July 22, 2011 final judgment for dissolution of marriage and its incorporated agreements, pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)). For the following reasons, we affirm the judgment of the circuit court.

¶ 3 RULE 341 VIOLATIONS

¶ 4 Heather's brief fails to adhere to the requirements set forth in Illinois Supreme Court Rule 341. Ill. S. Ct. R. 341 (eff. Feb. 6, 2013). We could justifiably strike Heather's brief, or dismiss this appeal, based upon her inadequate brief and her violations of Rule 341.

¶ 5 Rule 341 provides that all briefs should contain a statement of facts section "which shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6). Heather's Statement of Facts is incomplete and contains argument. Although an appellant may present evidence favorable to her position in the statement of facts, she cannot do so at the cost of this court's understanding of the case. See *In re R.G.*, 165 Ill. App. 3d 112, 115 (1988); *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 149 Ill. App. 3d 53, 57 (1986); affirmed in part and reversed in part on other grounds. A *pro se* litigant such as Heather is not entitled to more lenient treatment than attorneys. *Holzrichter v. Yorath*, 2013 IL App (1st) 110287, ¶ 78. "In Illinois, parties choosing to represent themselves without a lawyer must comply with the same rules and are held to the same standards as licensed attorneys." *Id*.

¶ 6 Rule 341 further requires that the brief contain an argument "which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7). "It is axiomatic that [a] reviewing court is entitled to have the issues clearly defined and supported by pertinent authority and cohesive arguments [citations], and that failure to develop an argument results in waiver. [Citation.]" (Internal quotation marks omitted.) *Sexton v. City of Chicago*, 2012 IL App (1st) 100010, ¶ 79. Heather's brief does not comply with these requirements. Nonetheless, a reviewing court has the choice to review the merits, even in light of multiple Rule 341 mistakes. *Id.*, ¶ 19 (citing *Estate*

of Jackson, 354 Ill. App. 3d 616, 620 (2004)). In our discretion, we will review this appeal but only because this court is familiar with the background of this matter as a result of our disposition of two of Heather's other *pro se* appeals.[1] However, since Heather's Statement of Facts does not contain the facts necessary to an understanding of the case, we rely on the record which includes the trial court's 26-page written order that Heather now appeals.

¶ 7 BACKGROUND

¶ 8 Heather and petitioner/counter-respondent, John M. O'Reilly (John) are divorced and have one minor child. The parties were married in Chicago on December 18, 2007. They separated approximately one month later in January 2008. On February 5, 2008, John filed a petition for declaration of invalidity of marriage, alleging duress in that Heather had threatened to abort their unborn child unless John married her. Heather filed her response to the petition in May 2008, denying most of the allegations. On July 7, 2008, John was ordered to pay Heather temporary support and also pay her health insurance premiums. On August 26, 2008, Heather gave birth to a child. A DNA test confirmed the child was John's.

¶ 9 On May 10, 2010, the court appointed Dr. Alan Jaffe as an independent evaluator, pursuant to section 604(b) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/604(b) (West 2008)) (the Act), which allows a court to seek advice from professional personnel on custody and visitation issues. The purpose of section 604(b) of the Act is to make the information available to assist the circuit court. *Johnston v. Weil*, 396 Ill. App. 3d 781 (2009, *aff'd* 241 Ill. 2d 169. The expert witness is appointed to protect the interests of minor children regarding issues of custody and visitation. *Id*. The minor child was represented for more than a year by the court-appointed child representative, attorney Jerry Goldberg. Attorney Goldberg,

[1] In the interest of attempting to preserve the anonymity of the minor child, we do not include any citation to this court's prior unpublished order.

aware that Heather had alleged abuse against John, investigated the family situation. He talked to family members, third parties, Dr. Jaffe and an independent visitation supervisor Joseph Avila. After his investigation, Attorney Goldberg concluded that the minor child was not in any danger, there was no indication of abuse, and *Heather's allegations were "meritless, fabricated and concocted to keep [the child] away from [John]*." (Emphasis added.) In addition to Attorney Goldberg, Dr. Jaffe also believed that *there was no past or ongoing abuse*.

¶ 10 As the child representative, Attorney Goldberg assisted the parties in reaching an agreement — after three years of litigation — that everyone deemed to be in the child's best interest. *Both Heather and John were represented by independent counsel*. The trial court found the agreement to be in the minor child's best interest and adopted it as the final agreed custody judgment. Pursuant to the agreed custody judgment, Heather is the child's sole legal custodian and primary residential parent, and John has unsupervised visitation with the child every Wednesday from 5:30 p.m. to 7:30 p.m., as well as alternating weekends Friday to Sunday.

¶ 11 The parties also entered into a marital settlement agreement concerning property and other financial issues. John was awarded his nonmarital property and real estate that he acquired prior to the marriage. The parties kept their personal property and accounts in their own names, possession and control. They agreed that each would be responsible for their individually incurred debts. Other than the $5,000 interim attorney fees that John had been ordered to pay to Heather's attorneys, the parties agreed to be responsible for their own attorney fees. They agreed to share the cost of the child representative fees. They acknowledged they were able to support themselves and each waived maintenance from the other. John was ordered to pay child support pursuant to the 20% statutory guideline ($920 per month), plus 67% of the child's uninsured

medical expenses, as well as daycare, childcare, summer school and extracurricular expenses. John also maintains health insurance coverage for the child.

¶ 12 On July 22, 2011, a final judgment of dissolution was entered which incorporated the parties' written marital settlement agreement and the agreed custody judgment (2011 final judgment). Heather subsequently interfered with John's visitation rights which resulted in the litigation that was the subject of the prior consolidated appeal.

¶ 13 On May 30, 2012, pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2010)), Heather filed a "Motion to Vacate 7/22/2011 Orders, Judgments, Riders, Agreements, Incorporated Documents, and Reserved Matters" (section 2-1401 petition). Heather's section 2-1401 petition contained seven counts as follows: Count I - fraudulent concealment; Count II - "facts that could not be known at the time of the 7/22/2011 trial"; Count III - ineffective assistance of counsel; Count IV – duress; Count V – unconscionability; Count VI - the judgment of dissolution was against public policy; and Count VII - the judgment was unconstitutional. Among other things, Heather argued that she would not have signed any of the documents, including the marital settlement agreement and agreed custody judgment, had she known that John had fraudulently concealed assets. Heather asserted that she "attempted to conduct discovery post Judgment for the purpose of a Child Support Modification" and that documents produced by the bank showed that John had misrepresented his income. Heather stated that she had also subpoenaed John's mortgage lenders and found further deception. She argued that John "[r]epeatedly filed his 13.3.1 from 2008 – 2011 without ever disclosing that he had an additional home in Ireland." She also asserted that "[t]o date, despite mandatory disclosure Rule [*sic*]" John had "refused to produce any tax returns to [her] from 2007, 2008, 2009, 2010, or 2011."

¶ 14 Between May and October 2012, Heather conducted discovery, issued subpoenas, and was granted two continuances of the hearing date. On October 30, 2012, a full evidentiary hearing was held on Heather's section 2-1401 petition to vacate the judgment in front of Judge Celia G. Gamrath, the same judge who entered the 2011 final judgment.

¶ 15 On January 4, 2013, the court denied Heather's section 2-1401 petition in a 26-page written order. Heather filed her notice of appeal on February 1, 2013. We subsequently granted Heather several extensions of time to file the record on appeal and her brief.

¶ 16 JURISDICTION

¶ 17 In her Statement of Jurisdiction, Heather states, *without any support or further analysis*, that she "filed a Notice of Appeal under Rule 303 and 306(a), and seeks to amend instanter to include Rule 311 because issues of custody *maybe* [*sic*] involved." (Emphasis added.) This court has jurisdiction over this appeal, but not for the reasons alluded to by Heather.

¶ 18 Supreme Court Rule 304(b)(3) makes appealable "[a] judgment or order granting or denying any of the relief prayed in a petition under section 2-1401 of the Code of Civil Procedure." Ill. S. Ct. R. 304(b)(3) (eff. Feb. 26, 2010). Thus, we have jurisdiction pursuant to subsection (3) of Rule 304(b) to review the trial court's October 2, 2013 order denying Heather's section 2-1401 petition. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 102 (2002) ("a circuit court's ruling on [a section 2-1401] petition is deemed a final order and provision has been made for immediate review of these orders in Supreme Court Rule 304(b)(3)").

¶ 19 STANDARD OF REVIEW

¶ 20 In the instant case, the court held an evidentiary hearing on Heather's section 2-1401 petition. Heather states that our standard of review is an abuse of discretion. This court has

stated that it reviews a trial court's decision on a section 2-1401 petition under the manifest weight of the evidence standard of review. *In re Marriage of Roepenack*, 2012 IL App (3d) 110198, ¶ 35; accord *S.I. Sec. v. Powless*, 403 Ill. App. 3d 426, 440 (2010) (applying manifest weight of the evidence standard where court ruled on section 2-1401 petition after conducting an evidentiary hearing and making certain findings of fact); see also *Domingo v. Guarino*, 402 Ill. App. 3d 690, 699 (2010) (concluding that standard of review of the trial court's denial of a petition to vacate a default judgment after the trial court holds an evidentiary hearing is the manifest weight of the evidence standard, and not the abuse of discretion standard.) A trial court's decision is against the manifest weight of the evidence when the opposite conclusion is clearly evident. *Id*. More recently, however, this court noted that the application of the manifest weight of the evidence standard is based on the interpretation of *dicta* contained in *People v. Vincent*, 226 Ill. 2d 1, 17 n. 5 (2007). *In re Marriage of Arjmand*, 2013 IL App (2d) 120639, ¶ 32. As the *Arjmand* court further noted, "the most recent supreme court holding indicates that the grant or denial of a section 2-1401 petition lies within the sound discretion of the trial court, depending on the facts and equities presented." *Id.*, ¶ 32 (citing *Paul v. Gerald Adelman & Associates, Ltd.*, 223 Ill. 2d 85, 95 (2006), quoting *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 221 (1986)); see also *Dovalina v. Conley*, 2013 IL App (1st) 103127, ¶ 12 ("Generally, the trial court has the discretion to grant or deny a section 2-1401 petition and we will not disturb the court's decision on review absent an abuse of that discretion."); see also *Cavalry Portfolio Services v. Rocha*, 2012 IL App (1st) 111690, ¶ 10 (applying the *de novo* standard in reviewing whether party presented a meritorious defense in his section 2-1401 petition, and the abuse of discretion standard in reviewing whether he complied with the due diligence requirements). We believe that, pursuant to the *Paul* decision, the standard of review is the abuse of discretion standard. "A

trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court." *Id*.

¶ 21 ANALYSIS

¶ 22 John did not file a response brief. Nonetheless, we may address the merits of this appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp*., 63 Ill. 2d 128, 133 (1976) (in the absence of an appellee's brief, a reviewing court should address an appeal on the merits where the record is simple and the claimed errors are such that the court may easily decide the issues raised by the appellant).

¶ 23 Section 2-1401 provides "a comprehensive statutory procedure" by which a party may seek relief from final orders and judgments "after 30 days from the entry thereof." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 220 (1986). Although a section 2-1401 petition is ordinarily used to bring facts to the attention of the trial court which, if known at the time of judgment would have precluded its entry, the petition may also be used to challenge a purportedly defective judgment for legal reasons. *Paul v. Gerald Adelman & Associates, Ltd*., 223 Ill. 2d at 94. "To be entitled to relief under section 2-1401, the petitioner must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2-1401 petition for relief." (Emphasis added.) *Id*. at 220–21.

¶ 24 Heather's first argument is that the trial court erred in finding Heather was not diligent in discovering the "new" facts alleged in her petition.[2] Heather does not cite to the record. In its

[2] The trial court order notes that Heather's section 2-1401 petition was limited to new facts involving "custody" and did not plead new facts as a basis to vacate the "financial terms" of the marital settlement agreement. Nonetheless, because Heather raised the

order the trial court found that Heather had not "proven that the failure to discover and present those facts before entry of the Judgments was not her fault." The trial court further noted that "[i]n fact, [Heather] blames herself and her attorneys for failing to discover facts that she admits were easily discoverable, subject to subpoena and otherwise known prior to the making of the agreements." "Section 2-1401 does not afford a litigant a remedy whereby he may be relieved of the consequences of his own mistake or negligence." *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 222 (1986).

¶ 25 Citing *In re Marriage of Roepenack*, 2012 IL App (3d) 110198, Heather has correctly noted, however, that "the requirement that a section 2-1401 petition demonstrate diligence is not inflexible." *Id*. at ¶ 40. Heather also cites case law noting that the requirement of due diligence will not be strictly enforced where there is fraud or unfair conduct. However, the trial court rejected Heather's allegation of fraudulent concealment, concluding that the record contained "no credible evidence to substantiate her claims." Heather has not presented any reasoned argument regarding this finding. Moreover, it is clear from the trial court's order that this finding was correct.

¶ 26 "To prove fraudulent concealment in a section 2-1401 petition, the petitioner must prove by clear and convincing evidence that the respondent intentionally misstated or concealed a material fact which the respondent had a duty to disclose and that the petitioner detrimentally relied on the respondent's statement or conduct." *In re Marriage of Buck*, 318 Ill. App. 3d 489, 494 (2000). In rejecting Heather's claim of fraudulent concealment, the trial court discussed the applicable legal principles and found that Heather had "failed to meet her burden of proving fraud by clear and convincing evidence." To prove that an ex-husband committed "fraud," in

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argument orally at the evidentiary hearing, the trial court addressed the purported "new facts" involving John's financial assets.

order to vacate or modify a judgment of dissolution, an ex-wife must show by clear and convincing evidence that her ex-husband intentionally misstated or concealed material facts which he had duty to disclose and that she detrimentally relied upon his statement or conduct. *In re Marriage of Broday*, 256 Ill. App. 3d 699, 703 (1993); accord *In re Marriage of Himmel*, 285 Ill. App. 3d 145, 148 (1996). "[A] settlement agreement will be set aside only if the misrepresentation of the assets could not reasonably have been discovered at the time of, or prior to, the entry of the judgment, and a litigant will not be relieved of the consequences of her lack of diligence in failing to discover such information relevant to the dissolution proceeding." *Himmel*, 285 Ill. App. 3d at 148.

¶ 27 As the trial court's order notes, at the hearing on Heather's section 2-1401 petition, she "brought to Court thousands of pages purportedly containing [John's] subpoenaed bank statements and financial records." After Heather failed to lay a proper foundation for their admission, the court offered her a second opportunity. Heather, however, did not seek to admit most of the records. Instead, Heather sought the admission of "self-selected certain pages of only a few documents she brought with her." However, John stipulated to their admission and the trial court described these documents in detail in its order. As the court noted: "The most glaring revelation about these documents is the fact that this information was easily available to [Heather] and her attorneys prior to entry of the Judgments." As the court explained, the fact that Heather never investigated the facts does not mean that John fraudulently concealed information. In sum, Heather failed to prove the existence of either "new facts" or fraudulent concealment. The court also explained that Heather testified that "the subpoenas she issued [to obtain the documents] were based on information she knew and that [John] disclosed *prior to entry* of the [July 22, 2011] Judgments." (Emphasis added.)

¶ 28 Heather's next argument is that her case is prejudiced without a transcript. She concedes the record contains no transcript of the October 30, 2012 hearing on her section 2-1401 petition to vacate the 2011 final judgment. She argues that "[w]ithout having a transcript, [she] is not only unable to prove that she had a meritorious case for the [section[2-] 1401 hearing; but now [she] faces the impossible task of trying to undo the further prejudice to her case posed by findings that could easily be refuted with the transcripts and exhibits, if not destroyed." Without citation to the record, Heather has made numerous claims regarding the reason for the lack of a transcript. She states that the court reporting company emailed Heather informing her that the transcript was destroyed as a result of a computer virus. She makes various allegations related to the court reporter's credibility ("Suspiciously, in weeks to follow the alleged computer virus, the court reporter claims to have had a flood that ruined her other transcription equipment, the audio recording, the paper notes, and all backups") and integrity (the court reporter "falsely represented that she was a licensed court reporter *** when in fact she is not licensed and thus barred from doing ANY transcriptions in the state of Illinois"). (Emphasis added.) Heather also complains of the court reporting service and states that it "refused to cooperate in this matter" and "like most of the parties in this matter, is currently under investigation by the Illinois Department of Financial and Professional Regulation" [and] has "been referred for prosecution." Not only does Heather provide no support for her assertions but, even if true, they are irrelevant.

¶ 29 In the absence of a transcript, Illinois Supreme Court Rule 323 (Ill. S. Ct. R. 323 (eff. Dec.13, 2005)) authorizes, and it is generally incumbent upon the appellant to file, either a bystander's report of the proceedings (Ill. S. Ct. R. 323(c)) or an agreed statement of facts (Ill. S. Ct. R. 323(d)). *Midstate Siding & Window Co., Inc. v. Rogers*, 204 Ill. 2d 314, 319 (2003); *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Supreme Court Rule 323 states in relevant part:

> "(c) Procedure If No Verbatim Transcript Is Available (Bystander's Report). If 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. In any trial court, a party may request from the court official any audiotape, videotape or other recording of the proceedings. The court official or any person who prepared and kept, in accordance with these rules, any audiotape, videotape, or other report of the proceedings shall produce a copy of such materials to be provided at the party's expense. Such material may be transcribed for use in preparation of a bystander's report. *** The court, holding hearings if necessary, shall promptly settle, certify, and order filed an accurate report of proceedings. ***
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> (d) Agreed Statement of Facts. The parties by written stipulation may agree upon a statement of facts material to the controversy and file it without certification in lieu of and within the time for filing a report of proceedings." Ill. S. Ct. R. 323(c), (d) (eff.Dec.13, 2005).

¶ 30 Thus, the absence of a transcript does not preclude appellate review because Supreme Court Rule 323 provides the appellant with a means to reconstruct an absent record. See, *e.g.*, *In re W.L.W.*, 299 Ill. App. 3d 881, 885 (1998). Even if there was no verbatim transcript of the hearing on her section 2-1401 petition, Heather was obligated to take advantage of the other available alternatives." See, *e.g.*, *In re Dawn H.*, 281 Ill. App. 3d 746 (1996) (trial court's bystander's report was filed on appeal in lieu of a verbatim transcript which had been lost).

¶ 31 Despite Heather's unsupported claims as to why she could not obtain a transcript of proceedings, Heather has also failed to obtain a bystander's report or an agreed statement of

facts. She also fails to show that she made any attempt to obtain a bystander's report *or* an agreed statement of facts and offers only the bald assertion that "the reasonableness of being able to agree on a bystanders report is non-existent."

¶ 32 The Illinois Supreme Court has "long recognized that to support a claim of error, the appellant has the burden to present a sufficiently complete record." *In re Marriage of Gulla and Kanaval*, 234 Ill. 2d 414, 422 (2009). " 'An 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.' " *Id*. (quoting *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005)). In the absence of a sufficient record, this court presumes that the trial court's order was in conformity with established legal principles and had a sufficient factual basis. *CNA International, Inc. v. Baer*, 2012 IL App (1st) 112174, ¶ 53 (citing *Foutch*, 99 Ill. 2d at 391-92). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984).

¶ 33 In *Foutch*, the court rejected the appellant's claim that the trial court abused its discretion in denying a motion to vacate a judgment order. *Id*. at 391. However, after discussing the insufficient appellate record, the court went on to consider the trial court's written order, which noted that counsel for the parties were present, the court heard the evidence and arguments of counsel, and the court was “fully advised in the premises.” *Id*. at 393. In the instant case, the trial court's order contains similar statements. The court noted that Heather appeared *pro se* and John appeared with counsel. The order states that the court had: "reviewed and considered" Heather's section 2-1401 petition to vacate, John's response, and Heather's answer to the response. Further, the court had "reviewed and considered the record, transcripts, [and] exhibits admitted into evidence." In denying Heather's section 2-1401 petition, the order also states it did so after

"having heard all the evidence, the testimony of the parties and arguments presented by both sides; due notice having been given; [and] the Court being fully advised in the premises. The order does not stop there. In its 26-page written order, the court gave a comprehensive discussion of the background of the case and the relevant legal standards for vacatur of judgments pursuant to section 2-1401. The court addressed each of Heather's seven "counts" and discussed in detail why none of them constituted sufficient grounds for vacating the judgment of dissolution. Since Heather has failed to provide an adequate report or record of the proceedings in the circuit court, we must assume that the circuit court's order had a sufficient factual basis and conformed to applicable law.

¶ 34 Heather's third argument appears to be that the trial court abused its discretion in denying her section 2-1401 petition because the trial judge was biased against her. As part of her argument, she asserts that the court entered "findings that are not supported by the record." Our discussion of *Foutch* applies to this argument. We must assume that the evidence supported the trial court's factual findings because Heather failed to provide an adequate report *or* record of the proceedings in the circuit court. See *Foutch*, 99 Ill. 2d at 391-92.

¶ 35 Heather presents no reasoned argument for the purported "bias" on the part of the trial judge. Finally addressing the court's 26-page written order, Heather merely lists, and apparently takes issue with, particular statements and asserts that the order "shows that even the most basic finding by the court are [*sic*] patently false." Our review of the statements shows that Heather's contention of bias on the part of the trial judge is baseless. As an example, in the background section, the court stated that "[t]he evidence shows the parties were married on December 18, 2007, after [Heather] became pregnant." Heather contends that this statement is "patently false" and asserts that "[t]here is no evidence that [Heather] was pregnant prior to the marriage." She

contends that "[a]lthough this incorrect finding on its own may be a harmless error, it does begin to distort the appearance of the characters of the parties and the nature of the case." She also claims that "[w]hen combined with countless other inaccurate findings, it becomes highly prejudicial and deprives the parties of a fair trial in the future." She argues that "[t]he well has been poisoned." Heather's meritless assertion is baffling, especially when we note that in Heather's "verified" response to John's petition for a declaration of invalidity of marriage, she admits the parties were married on December 18, 2007, but also "admitted" John's allegation that "on or around late October 2007," she told John that "she was pregnant with his child." As another example of the trial court's purported bias, Heather points to another statement in the background section of the order that John filed for "divorce." Heather notes that John filed instead "for a declaration of invalidity" seven weeks after the marriage. We fail to see how these statements, or any of the additional statements listed by Heather, show "bias" on the part of the trial judge.

¶ 36 "Judges, of course, are presumed impartial, and the burden of overcoming the presumption by showing prejudicial trial conduct or personal bias rests on the party making the charge." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31 (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). "The fact, for example, that a judge has previously ruled against a party in any particular case would not disqualify the judge from sitting in a subsequent case involving the same party." *Id.* With respect to bias based upon a judge's conduct during a trial, Illinois courts have relied upon the United States Supreme Court's description:

> " '[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-

> seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They *may* do so if they reveal an opinion that derives from an extrajudicial source; and they *will* do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.' (Emphases in original.)" *Id.* (citing *Eychaner*, 202 Ill. 2d at 281, quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)).

Certainly, none of the statements that Heather lists revealed " 'such a high degree of favoritism or antagonism as to make fair judgment impossible.' " *Eychaner*, 202 Ill. 2d at 281 (quoting *Liteky*, 510 U. S. at 555. As an example of such remarks, the *Liteky* court cited the remarks alleged to have been made by a district judge in *Berger v. United States*, 255 U.S. 22 (1921), a World War I espionage case against German-American defendants. There, the judge purportedly stated: " 'One must have a very judicial mind, indeed, not [to be] prejudiced against the German Americans' because their 'hearts are reeking with disloyalty.' " *Liteky*, 510 U.S. at 555 (quoting *Berger*, 255 U.S. at 28. Heather's assertion that the trial court was biased against her is meritless.

¶ 37 Heather has also argued that the trial court erred when it found "the agreement" to be conscionable. A marital settlement agreement is unconscionable where there is "an absence of a meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." (Internal quotation marks omitted.) *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 41. The fact that an agreement "merely favors one party over another does not make it unconscionable." (Internal quotation marks omitted.) *Id.* "To rise

to the level of being unconscionable, the settlement must be improvident, totally one-sided or oppressive." *Id.* (Internal quotation marks omitted.)

¶ 38 Again, Heather presents no reasoned argument regarding the alleged error in the trial court's finding that the parties' agreement was not unconscionable. Therefore, Heather has forfeited the issue. However, our review of the trial court's order shows a reasoned analysis and correct disposition of Heather's count V alleging "unconscionability." Although Heather takes issue with some of the court's findings, she cites to that portion of the order in which the court found that Heather was not under "duress" as she alleged in count IV of her section 2-1401 petition.

¶ 39 Heather, however, has additionally argued that the court erred in finding that Heather was not under duress at the July 22, 2011 prove-up. Her argument is baseless.

¶ 40 "Duress has been defined as including the imposition, oppression, undue influence or the taking of undue advantage of the stress of another whereby one is deprived of the exercise of his free will." *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 215 (1994). One asserting duress has the burden of proving, by clear and convincing evidence, that she "was bereft of the quality of mind essential to the making of the contract." *Id.* "[S]tress is common in dissolution proceedings." *Flynn v. Flynn*, 232 Ill. App. 3d 394, 401 (1992). Stress alone does not prove coercion or duress. *Id.* As the trial court noted, this principle applies even to the stress of possibly losing custody of a child. See *In re Marriage of Steadman*, 283 Ill. App. 3d 703, 710 (1996) ("While wife's fear that she may lose custody of her children no doubt caused her anxiety, we do not recognize this as a factor impairing her ability to exercise her free will and make a meaningful choice when the record reflects that she agreed to negotiations, took part in the negotiations and then presented the substance of these negotiations, under oath, to the trial court.

Many spouses may experience anxiety when appearing in court because of a petition to dissolve a marriage and this anxiety is no doubt heightened when one fears she may lose custody of her children; however, this factor, without more, does not clearly and convincingly demonstrate that one lacked the ability to make a voluntary decision.").

¶ 41 Although Heather refers to the presence of John and his attorney at the July 22, 2011 prove-up, the court noted Heather was present with *her* attorney and further noted that the court had the opportunity to observe Heather as well as her interactions with her attorney. We note that the anxiety inherent in making the choice to settle a case rather than accept the uncertainty of a trial does not, by itself, constitute coercion or duress. *In re Marriage of Flynn*, 232 Ill. App. 3d 394, 401-02 (1992).

¶ 42 Moreover, the trial court's order shows a reasoned analysis and correct disposition of Heather's count IV alleging "duress." As the court noted: "The settlement agreements were by no means hastily contrived but were the result of extensive litigation, written and oral discovery, and multiple pretrial conferences over the course of three years." Heather has failed to show the trial court erred in concluding that she failed to meet her burden of proof that she was under duress when she entered into the agreements.

¶ 43 CONCLUSION

¶ 44 In sum, Heather has failed to show that the trial court abused its discretion in denying her section 2-1401 petition to vacate the final judgment for dissolution of marriage and its incorporated agreements. For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 45 Affirmed.