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2014 IL App (5th) 130213-U

NO. 5-13-0213

IN THE

APPELLATE COURT OF ILLINOIS

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).

FIFTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
)	Circuit Court of
RICHARD D. JONES,)	Madison County.
)	
Petitioner-Appellee and Cross-Appellant,)	
)	
and)	No. 06-D-949
)	
CHRISTY ANN JONES,)	Honorable
)	Duane L. Bailey,
Respondent-Appellant and Cross-Appellee.)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's order enforcing its property division judgment following its affirmance on appeal, in which the circuit court granted an offset for dissipation of a marital account during the pendency of the appeal, is affirmed where the record on appeal is inadequate to determine whether the amount of the offset was proper.

¶ 2 The respondent, Christy Ann Jones, appeals the April 4, 2013, order of the circuit court of Madison County which clarified, upon Christy's motion, its order entered January 11, 2013, regarding the enforcement of the circuit court's September 9, 2008, judgment for dissolution of Christy's marriage with the petitioner, Richard D. Jones,

following this court's judgment affirming the property division set forth in that judgment. See *In re Marriage of Jones*, No. 5-09-0226 (Mar. 25, 2011) (unpublished order under Supreme Court Rule 23). On appeal, Christy argues that the circuit court erred when it refused to grant her an offset from the 50/50 distribution of an Alton Securities Account, ending in 1618 (the account), for expenditures from that account that Richard made between September 9, 2008, the date of the dissolution judgment, and July 8, 2009, the date that the circuit court ordered the account to be frozen. Richard cross-appeals the April 4, 2013, order, and asserts that the circuit court erred by awarding \$29,000 to Christy, which Richard characterizes as an improper modification of the circuit court's previous temporary maintenance award. For the following reasons, we affirm the order in its entirety.

¶ 3

FACTS

¶ 4 This is the second appeal in this case. The parties were married on July 17, 1982. No children were born to the parties. The marriage lasted for 26 years and was dissolved pursuant to a judgment entered by the circuit court on September 9, 2008. The parties possessed a substantial amount of property that was divided in the dissolution judgment. However, not all of the property was immediately distributed. Richard filed an appeal of the dissolution judgment and Christy filed a cross-appeal (first appeal), in which this court considered and affirmed all issues relating to the division of the property. *In re Marriage of Jones*, No. 5-09-0226 (Mar. 25, 2011) (unpublished order under Supreme Court Rule 23). By way of the dissolution judgment, the account at issue was to be split 50/50 between the parties, and Richard was ordered to pay temporary maintenance to

Christy in the amount of \$3,000 per month for six months.¹ In order to resolve the current issues on appeal, it is important to detail the incomplete record before us with regard to the myriad of proceedings that took place while the first appeal was pending and thereafter.

¶ 5 On May 12, 2009, Richard filed a motion for a stay of the September 9, 2008, judgment pending appeal. See Ill. S. Ct. R. 305 (eff. July 1, 2004) (providing that upon motion, the circuit court may enter a stay of judgment upon any conditions that are just). On June 26, 2009, Christy filed a petition for a rule to show cause and citation for contempt, alleging, *inter alia*, that Richard made numerous withdrawals from the account which is the subject of this appeal² since the date of the dissolution judgment, in violation of an order entered on December 11, 2008, which enjoined the parties from spending in excess of \$20,000 in any single month. The December 11, 2008, order does not appear in the record on appeal. The petition for a rule to show caused alleged that in May 2009, Richard withdrew \$33,100 from the account and that he withdrew a total of \$148,000 from the account in the nine months between the entry of the dissolution order and the

¹Although no order is contained in the record on appeal, it appears that this temporary maintenance award was extended throughout the pendency of the first appeal.

²The account is comprised of two portions, namely stocks and cash distribution. As clarified at oral argument, only the cash distribution portion is relevant to this appeal. Accordingly, any mention of the account in this order is in exclusive reference to the cash distribution portion of the account.

filing of the petition for rule to show cause. The petition further alleged that Richard refused to permit Christy to make withdrawals from the account, which was held in Richard's name alone, and that as a result, Christy only received her \$3,000 per month temporary maintenance payment for living expenses.

¶ 6 On July 8, 2009, the circuit court entered an order addressing numerous issues regarding the status of property division during the pendency of the first appeal. The circuit court denied Richard's motion to stay the judgment pending the appeal but ordered that all Richard's accounts at Alton Securities Group, including the account at issue, were to be frozen. The circuit court ordered each party to set up a separate account at a different financial institution, and ordered Alton Securities Group to issue Christy and Richard each a check, in the amount of \$100,000, to be used for living expenses while the first appeal was pending. The circuit court also ordered that Alton Securities Group issue a check to Christy from the account, in the amount of \$25,000, for her attorney fees in the first appeal.

¶ 7 The circuit court's July 8, 2009, order also addressed Christy's petition for rule to show cause. According to the order, proceedings were held on the petition, with Richard being the only witness, but no report of proceedings appears of record. The circuit court found that Richard only exceeded the \$20,000 spending limit set forth in the December 11, 2008, order in the month of January 2009. The circuit court further held as follows:

"Dr. Jones has an interesting argument that he didn't spend money; rather, he reinvested money. However, the Court notes a significant amount of money withdrawn was non-marital property, i.e. social security deposits. The Court does

not find the actions of [Richard] to be willful and as such does not hold him in contempt. However, the Court sees the inequity of [Richard's] having access to \$20,000.00 plus dollars a month and [Christy] having access to \$3,000 in maintenance. The Court therefore reviews [*sic*] the right to balance this inequity after the appeal to the Fifth District has been addressed in so much as the Fifth District may issue instructions which could affect the monies available for distribution."

¶ 8 On July 15, 2009, Richard filed a motion to terminate maintenance, health insurance, and vehicle insurance, as well as to clarify the circuit court's order allowing Christy \$25,000 in attorney fees for the first appeal. Richard argued that there had been a substantial change of circumstances that justified the termination of the previous order of the court that Richard pay Christy \$3,000 per month in maintenance and pay for her vehicle and health insurance because the parties received a \$100,000 distribution for living expenses per the July 8, 2009, order. The motion also sought clarification from the circuit court that the attorney fees awarded Christy from the account would be deducted from her ultimate share of the account.

¶ 9 On September 25, 2009, the circuit court entered an order that, *inter alia*, granted Richard's motion to terminate Christy's temporary maintenance. There is no report of proceedings in the record of this hearing, and as a result, this court has no means of knowing what evidence was presented. The only memorialization of that hearing that appears in the record is the order itself, in which the circuit court stated that the following matters "were contested":

"The Court in its order providing financial support to both parties, being dated July 8, 2009, had specifically authorized a check to each party in the amount of \$100,000, to be used for living expenses for both parties pending the Notice of Appeal. The Court further stated in the event either party needs additional sums of money, they may petition the Court for additional expenses as needed. The Court in the order stated, 'however the Court sees the inequity of Dr. Jones having access to \$20,000 plus dollars a month and Mr. Jones having access to \$3,000 in maintenance.' The Court [*sic*] referring to access to funds, which at that time the Court felt was inequitable.

The Court now at this time reviews the accounts of both parties and their statement of Assets and Liabilities. Although there is a disparity in monthly income from sources of social security or maintenance, neither party is completely limited to those sources of income, to maintain their day to day living and lifestyle. Neither party is financially injured by the Court's order involving freezing the balance of existing accounts until further direction from the Fifth District Appellate Court. This leaves the argument of [Christy's attorney] as to whether or not [Richard] has had the greater benefit of the use of the couple's assets prior to the final division of the property.

[Richard] has more assets than [Christy] at this point. However, those assets were appropriately divided prior to the freezing of the assets by this Court and the Court has retained jurisdiction in the event the Court feels there is additional inequity as noted in its July 8, 2009[,] Order. The Court further notes

since July of 2009, [Richard's] access to \$20,000.00 in monthly income has been reduced by the opportunity to keep monies from his IRA, within the IRA instrument, without being subject to the [f]ederal [g]overnment's mandatory requirement to withdraw funds. This is due to the current economic situation in the [c]ountry. However, [Richard] realizes that condition may indeed change before the year ends. Therefore, the economic inequities between [Richard and Christy] has [*sic*] been reduced by a voluntary action of [Richard], although he may still have access to said additional sums of money, but he chooses not to do so."

¶ 10 The circuit court went on to grant Richard's motion to terminate maintenance based on its previous order to issue both parties a check in the amount of \$100,000 from the account for living expenses, and then stated:

"The Court again mentions the Court felt there could have been possible inequities for the time period that [Richard] was in the position to access funds from sources other than [Christy], which could have created a partial hardship. Court finds that part of this potential hardship may have been remedied by the extension of the maintenance beyond the initial six month time period [a]s contemplated by the Court."

¶ 11 On October 6, 2009, Christy filed a motion to reconsider the circuit court's decision to terminate her temporary maintenance, but this motion was continued over Richard's objection on November 9, 2009, to be reset upon Christy's written request. Although transcripts of hearings do not appear of record, during the pendency of the first

appeal, the circuit court also entered orders authorizing distributions from the stock portions of the account for tax purposes, into a new joint account entitled "Richard Jones and Christy Jones appeal account," ordering Richard to pay any taxes associated with the distributions.

¶ 12 On March 25, 2011, this court issued its order affirming the circuit court's original property division order. *In re Marriage of Jones*, No. 5-09-0226 (Mar. 25, 2011) (unpublished order under Supreme Court Rule 23). In an order dated March 30, 2011, after an evidentiary hearing that, again, does not appear of record, the circuit court authorized another distribution of \$40,000 to each of the parties from the "Richard Jones and Christy Jones appeal account" and \$25,000 each from the account at issue in this appeal. On April 28, 2011, Richard filed a motion to reconsider and clarify the circuit court's March 30, 2011, order, arguing that the essence of the circuit court's order was to order Richard to pay all of the federal income taxes generated from the mandatory distribution from the account at issue, approximately \$40,000, resulting in a windfall to Christy in the amount of \$20,000. Because of the mandatory distributions from the account at issue, which was titled in Richard's name alone, Richard argued that he was subject to immediate tax liability for the distributions.

¶ 13 On December 6, 2011, after another evidentiary hearing that does not appear of record, the circuit court entered another detailed order regarding mandatory IRA distributions from the account at issue, distribution of the account between the parties following the resolution of the first appeal, and Richard's past motions for clarification regarding his bearing the tax liability on the previous mandatory distributions. The

circuit court ordered an immediate distribution from the account that is the subject of this appeal due to tax consequences of failing to take a mandatory distribution. To this end, the circuit court ordered a distribution of \$175,000 split equally between the parties. As to the ultimate distribution of the account, the circuit court ordered a 50/50 split, as set forth in the original property division order. With regard to tax liability on the mandatory distributions for previous tax years while the first appeal was pending, the circuit court ordered that Richard would receive no offset for his tax liability for 2009 and 2010. As for 2011, the circuit court ordered that the tax liability be split evenly between the parties.

¶ 14 On December 21, 2011, Christy filed a motion to modify or, in the alternative, to amend or, in the alternative, to clarify, the circuit court's December 6, 2011, order. In the motion, Christy argued, *inter alia*, that the order failed to consider or provide compensation, by way of cash or offset, to Christy for "the approximately \$200,000.00 that [Richard] individually spend [*sic*] from marital funds prior to the [c]ourt's 'freezing' investment accounts for use as [Richard's] appeal bond, as established by the testimony and exhibits offered by [Richard's] accountant at the last hearing held herein." In an order entered December 27, 2011, after oral argument that does not appear of record, the circuit court reiterated that the account at issue was to be distributed 50/50, as to stocks and cash, and stated that other pending issues were to be reserved for further determination.

¶ 15 On April 11, 2012, Christy filed a motion for hearing on all remaining matters to enforce judgments, stating, *inter alia*, that:

"The Court received evidence and exhibits on the issue raised in paragraph 6 on page 3 of [Christy's] 'Motion to Modify or, in the Alternative, to Amend or, in the Alternative, to Clarify Order Entered December 6, 2011,' wherein [Christy] sought an award of approximately \$200,000 in compensation for monies [Richard] withdrew from marital accounts and spent on himself prior to the Court's 'freezing' investment accounts for [Richard's] use in lieu of his appeal bond, which reduced the marital estate while the marriage was undergoing disintegration, amounting to dissipation of assets by [Richard,] which matter is still pending and not ruled on or addressed by the Court."

¶ 16 Christy's motion was followed by Richard's motion, filed July 20, 2012, to determine Christy's liability for taxes incurred by the mandatory distribution from the account for the year 2011, stating that Christy received 50% of the \$175,000 mandatory IRA distribution and Richard was required to pay all the taxes triggered by the distribution. On November 1, 2012, after a hearing, the report of proceedings which, again, does not appear in the record on appeal, the circuit court again addressed Christy's continued arguments for further maintenance and Richard's alleged dissipation of the assets of the account at issue on appeal. The circuit court first denied admission into evidence of several exhibits. Although there is no way for this court to discern, from the record, what these exhibits were, the circuit court stated in its order that these exhibits would "go directly toward whether or not relief may be sought upon some of [Christy's] concerns." Addressing Christy's October 6, 2009, motion to reconsider the issue of maintenance, the circuit court noted that Christy did not make any request for relief in

that motion on her theory that Richard dissipated marital assets "as a result of [Richard's] making certain improvements to the marital home." The circuit court characterized this as a new theory that was not raised in September 2009 or in the motion to reconsider, and stated that it should have been raised at that time, and on that basis, denied admission of Christy's exhibits. The November 1, 2012, order also addressed issues regarding the marital home and tax consequences regarding mandatory distributions from the account during the pendency of the appeal.

¶ 17 On November 15, 2012, Richard filed a motion to clarify, correct, and reconsider the circuit court's order, arguing issues regarding the value of the marital home and his liability for taxes due to the mandatory distributions to the account at issue. On November 21, 2012, Christy filed a motion to enforce the judgment, requesting, *inter alia*, the distribution of the account at issue on appeal. Although the motion states that Christy should receive \$134,084.54, it is unclear from the motion how Christy arrives at this figure and whether she figured offsets for any alleged dissipation of the account. Christy attached "Investment Access Account Statements" for the account to her motion, consisting of activity summaries for each month from August 2008 to December 2008 and annual statements for 2009, 2010, and 2011.

¶ 18 On December 13, 2012, a hearing was held on Richard's motion to clarify, correct, and reconsider the November 1, 2012, order, as well as Christy's motion to enforce. This is one of two proceedings transcribed in the record on appeal. In support of her motion to enforce, Christy argued that her portion of the cash in the account at issue should be raised in direct proportion to the amount of money that Richard took out of the account

before it was frozen. However, Christy introduced no evidence at the hearing. In response, Richard argued that the issue of Richard's dissipation of the account had been raised in previous evidentiary hearings and the circuit court had held that he did not have an unfair advantage because the money was used to pay Christy maintenance and to make improvements on the marital home, which increased its value and benefitted Christy as to her half share of the equity. Richard reminded the circuit court that orders entered September 25, 2009, December 6, 2011, and November 1, 2012, had all addressed this issue, and that the circuit court had found no inequity due to other advantages given to Christy while the first appeal was pending, such as not having to pay any taxes for the mandatory distributions from the account through 2011, not having to pay half of the mortgage on the marital residence, and withdrawals Christy made from another marital account which was not being offset.

¶ 19 On January 11, 2013, the circuit court entered its order upholding its decision to split the account 50/50 between the parties, including the stocks and the cash, subject to certain offsets the circuit court enumerated specifically in the order. Specifically, the circuit court ordered that Richard be given credit for \$25,000 that was given to Christy from the account for her attorney fees on appeal and for \$908 for half of the taxes that Richard paid for the 2011 mandatory distribution. The circuit court ordered that the account be distributed immediately.

¶ 20 On February 8, 2013, Christy filed a motion to reconsider and/or clarify the circuit court's order of January 11, 2013. In her motion, Christy argued that she should be awarded half of the cash in the account as it was valued on September 1, 2008, the date

the original dissolution and property division judgment provided that the property should be valued for purposes of division. Christy again argued that Richard's use of money from the account prior to it being frozen for house payments, utility bills, maintenance, health insurance premiums, and other discretionary spending after September 1, 2008, should in no way diminish her interest in the cash component of the account.

¶ 21 On April 4, 2013, a hearing was held on Christy's motion to reconsider and/or clarify, which is transcribed in the record on appeal. Christy argued that between September 2008 and July 2009, when the account was frozen, Richard was essentially using the account as his personal account and made substantial withdrawals, including withdrawals for Christy's maintenance payments and mortgage payments. Christy's counsel stated that she had "a couple of demonstrative exhibits" showing that the damage done to Christy as a result of these withdrawals is approximately \$87,714.55, and asked the circuit court permission to explain how she arrived at that figure. Richard objected, stating once again that the issue had been determined in past hearings and was *res judicata*. Richard stated that because this hearing was for a motion to reconsider and/or clarify, new evidence should not be permitted. The circuit court sustained the objection as to the demonstrative exhibits, but permitted Christy to explain the calculation that she employed to arrive at the figure. However, Christy did not enumerate all the withdrawals she contended Richard made, but stated that it included utility bills, checks to his children, and a check for over \$15,000 to his attorney. Christy also stated that the withdrawals included house payments. Notably, the circuit court inquired of Christy's counsel as to the status of her argument should the circuit court choose to divide the

account as it was valued on September 1, 2008, which is the date provided for the valuation for purposes of distribution in the original dissolution and property division judgment. Christy's counsel noted that it would be inequitable to do so because the account had gained substantial earnings during that time and so those earnings would have to be taken into consideration.

¶ 22 In rebuttal, Richard again referred to the circuit court's past orders, and the expenses that the circuit court had ordered Richard to incur to the benefit of Christy during the pendency of the first appeal, including the order that Richard pay all the taxes on the mandatory distribution in 2010, which resulted in Christy receiving \$65,000 and Richard receiving \$25,000. Richard also reiterated withdrawals Christy had made from other marital accounts. Richard also argued that the circuit court's prior rulings on these issues were final and nonappealable.

¶ 23 The circuit court, ruling from the bench, stated that it would grant no offsets to Christy for money Richard used in the account for house payments, taxes, utilities, and house maintenance or improvements, as those were necessary to maintain the value of the marital home during the pendency of the appeal. The circuit court then stated that it would agree that for the limited time period before the account at issue was frozen, Richard was more than likely using it as a checking account and in the past it had ruled that was not an offset, but that it was now reconsidering that position. The circuit court ruled that it was going to allow Christy an offset for the amount of maintenance that had been paid to her from the account but that it was not going to allow for additional offsets. After a recess, the circuit court made a finding that Christy had been paid \$29,000 in

maintenance from the account prior to the time it was frozen. The circuit court further ruled that although the fact that this maintenance came out of the account meant that Christy had paid half of her own maintenance, it was going to award her the entire amount as an offset from the 50/50 split of the account, but would not award any further offsets for expenditures made by Richard during that time period. The circuit court entered an order to this effect the same day.

¶ 24 On May 1, 2013, Richard filed a motion to reconsider and clarify the circuit court's order entered on April 4, 2013, asking the circuit court to clarify whether the \$29,000 in additional monies to be distributed to Christy from the account is to be considered additional maintenance or whether it is to be considered an offset. On the same day, the circuit court entered an order stating that the \$29,000 is considered to be an offset by the court and not additional maintenance. On May 3, 2013, Christy filed a timely notice of appeal from the January 11, 2013, order and the April 4, 2013, order. Richard filed a timely cross-appeal.

¶ 25

ANALYSIS

¶ 26 The issues in this appeal and cross-appeal relate to the circuit court's attempt to maintain the standard of living for the parties during the pendency of an appeal from the circuit court's judgment of dissolution of marriage and property division, and the impact that these rulings had on the circuit court's ultimate enforcement of its property division judgment. From what we can discern from the incomplete record on appeal, the account at issue, which had been divided equally between the parties in the property division judgment, remained intact during the pendency of the first appeal in lieu of an appeal

bond, as the circuit court stated in its July 8, 2009, order. During that time, issues between the parties arose regarding living expenses, maintenance of the marital home, extension of the temporary maintenance provision in the original judgment, and tax liability for mandatory distributions from the IRA portion of the account. When the circuit court finally ordered the account to be distributed after the first appeal was decided, the circuit court was asked to review and consider whether offsets were appropriate from that distribution in order to honor the equal division of the account between the parties as set forth in the original judgment, which this court had affirmed on appeal. It is from this order regarding the distribution of the account, and whether any offsets were appropriate, that Christy appeals and Richard cross-appeals.

¶ 27 In light of the aforementioned characterization of what is at issue in this appeal, we find that Christy's argument, that the circuit court erred in not valuing the account as of the date of the dissolution, and the case she cites in support thereof, *In re Marriage of Mathis*, 2012 IL 113496, is inapposite to our resolution of this appeal. In *Mathis*, the circuit court had entered a judgment of dissolution in a bifurcated proceeding, and reserved issues regarding the valuation of the marital assets for the purposes of dividing the marital property under the terms set forth in section 503 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503 (West 2010)). *Id.* The cause was continued for a number of years, and when it finally came time to try the issues relating to valuing the marital assets in order to divide them, the issue arose as to whether they should be valued as of the date of the dissolution judgment or as of the date of the property division hearing. *Id.* Our Illinois Supreme Court held that, in a bifurcated

dissolution of marriage proceeding, when there has been a lengthy delay between the date of the entry of the dissolution judgment and the hearing on the valuation and division of the marital assets, the date that the marital assets should be valued for purposes of property division is on or near the date the court entered the judgment of dissolution. *Id.* ¶ 30.

¶ 28 In this case, unlike *In re Marriage of Mathis*, the circuit court entered the dissolution judgment and the property division judgment on the same date. Having already valued the marital assets, the circuit court entered a judgment dividing the assets equally between the parties. Once that judgment was affirmed on appeal, the parties requested the circuit court to enforce the judgment, distributing the account evenly between the parties with some offsets that were required due to orders entered during the pendency of the appeal aimed at maintaining the standard of living between the parties and other similar issues. As recognized in *In re Marriage of Mathis*, in such a case, when the value of the assets has fluctuated before the property division judgment has been enforced, the circuit court should preserve the percentages awarded, and adhere to the intent of dividing the account equally in those cases where the property division judgment required a 50/50 split. *Id.* (discussing *In re Marriage of Schinelli*, 406 Ill. App. 3d 991 (2011)).

¶ 29 The distinction between the situations in *Mathis* and *Schinelli*, and the problem with Christy's argument, was addressed by the circuit court, and conceded by Christy's trial counsel at the April 4, 2013, hearing on Christy's motion to reconsider and/or clarify, when the circuit court inquired of Christy's trial counsel as to the status of her argument

should the circuit court choose to divide the account as it was valued on September 1, 2008, which is the date provided for in the original dissolution and property division judgment. Christy's counsel noted that it would be inequitable to do so because the account had gained substantial earnings during that time and so those earnings would have to be taken into consideration. This concession by Christy's trial counsel directly contradicts the argument that Christy presents on appeal, that the circuit court should have given Christy half of what the account was valued on the date of dissolution.

¶ 30 For all of the aforementioned reasons, we find that a resolution of the issue presented by Christy's appeal requires a determination as to whether the circuit court erred in granting the \$29,000 offset to Christy, which Christy argues should have been greater due to Richard's unilateral spending from the account prior to its being frozen. This is essentially a question of whether Richard dissipated the assets in the account, and if so, as to what amount. With regard to Richard's cross-appeal, we must determine whether the \$29,000 offset to Christy was improper, as an offset for the maintenance Richard paid to Christy from the account or an improper modification of the circuit court's previous maintenance award. Accordingly, we decline to adopt a *de novo* standard of review as urged by the parties. Our review of case law, which addresses issues regarding enforcement of property division orders and whether the parties are entitled to offsets, reveals that this court has utilized either the manifest weight of the evidence standard of review, the abuse of discretion standard of review, or both. See *In re Marriage of Irvine*, 215 Ill. App. 3d 629, 634 (1991) (applying an abuse of discretion standard of review to the circuit court's decision, in an action to enforce a dissolution

judgment, as to whether to award the husband an offset for expenses related to maintenance and repair of properties awarded to the wife); *In re Marriage of Admire*, 193 Ill. App. 3d 324, 332 (1989) (applying a hybrid manifest weight of the evidence/abuse of discretion standard of review in reviewing the circuit court's decision, in an action to enforce a dissolution judgment via an action for contempt, as to which party was entitled to an offset for the payment of property taxes on the marital residence); *In re Marriage of Martino*, 166 Ill. App. 3d 692, 695 (1988) (applying a manifest weight of the evidence standard of review to the circuit court's decision, in a contempt action brought by wife for husband's failure to pay maintenance, that husband was entitled to an offset for past overpayments). Accordingly, our review of the issues on appeal and cross-appeal will utilize these standards of review.

¶ 31 Having determined the standard of review, we turn to the issue of whether the circuit court erred in not awarding Christy a greater offset due to unilateral spending from the account by Richard between the time of the dissolution judgment and the time the circuit court froze the account. As set forth in great detail above, Christy first raised the issue of Richard's unilateral spending in a petition for rule to show cause and citation for contempt on June 26, 2009. The transcript of the evidentiary hearing on that petition is not included in the record on appeal. In its order on the petition, the circuit court noted that Richard was not in contempt and found that Richard was also making deposits of nonmarital funds into the account. The circuit court reserved the issue of any inequity caused by Richard having sole access to the account in future orders. After another hearing on Richard's motion to terminate temporary maintenance, the transcript of which

does not appear in the record on appeal, the circuit court made further findings of fact regarding this issue, finding that the extension of Christy's maintenance beyond the initial six-month period reduced any inequity from Richard's access to the account before it was frozen. The circuit court held subsequent hearings regarding tax liability for mandatory distributions from the IRAs in the account, and those transcripts are also not included in the record on appeal. The circuit court found Richard to be unilaterally responsible for those taxes for the years 2009 and 2010. After a hearing on November 1, 2012, which again is not included in the record on appeal, the circuit court made further rulings regarding the issue of Richard's alleged dissipation of the cash in the account, denying admission of specific exhibits, the contents of which this court has no way of knowing. The November 1, 2012, hearing on Christy's motion to enforce the judgment, which does not appear of record, was not an evidentiary hearing, and the circuit court ruled that the issues raised by Christy regarding Richard's alleged dissipation of the account were essentially *res judicata*, waived, or forfeited. Accordingly, the circuit court's order regarding distribution of the account did not grant Christy any offsets for Richard's alleged dissipation. A similar argument took place in the hearing held on April 4, 2013, where the circuit court denied admission of Christy's "demonstrative exhibits" regarding the offsets she was claiming as a result of Richard's alleged withdrawals.

¶ 32 Because the evidence regarding Richard's spending was presented in numerous prior hearings that do not appear in the record on appeal, we find that the record on appeal is inadequate for this court to disturb the circuit court's decision with regard to what offsets Christy should be awarded for Richard's alleged spending. It is the burden

of the appellant to furnish a record sufficient to establish reversible error. *In re Marriage of Hildebrand*, 166 Ill. App. 3d 795, 800 (1988). Where the record is lacking, a reviewing court will indulge every presumption favorable to the judgment or order appealed from. *Id.* Thus, this court is required to assume that the evidence heard by the circuit court, but not contained in the record on appeal, is sufficient to support the judgment and to affirm the judgment appealed from. *Id.* at 801.

¶ 33 On cross-appeal, Richard argues that Christy is not entitled to the \$29,000 offset because he characterizes the offset as additional maintenance. We do not agree. The circuit court made clear in its May 1, 2013, order, that it intended the \$29,000 to be an offset, rather than additional maintenance. During the hearing on April 4, 2013, the circuit court partially reconsidered its previous rulings regarding Richard's spending from the account, making a finding that Richard was more than likely using it as a checking account during that time period, and also had been paying Christy's maintenance from the account. The circuit court recognized that \$29,000 was the amount of maintenance Christy had been paid from the account, and that Christy had essentially paid half of that amount due to the account being a marital asset to be split evenly between the parties, but stating that it was awarding Christy the entire \$29,000 as an offset. Again, because of the inadequacy of the record on appeal, we will not disturb the circuit court's decision to offset for that amount. Based on evidence that is not before us regarding Richard's withdrawals from the account, deposits to the account, amounts of tax liability on mandatory distributions that the circuit court imposed on Richard, and Richard's payment of taxes, maintenance, and upkeep of the marital residence during the pendency of the

first appeal, the circuit court chose to award that amount as an offset, and we must presume its decision is properly based on the evidence. See *id.*

¶ 34

CONCLUSION

¶ 35 For the foregoing reasons, the April 4, 2013, order of the circuit court of Madison County is affirmed.

¶ 36 Affirmed.