

No. 1-12-0773

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).

| | | |
|--------------------------|---|-----------------------------|
| <i>In re</i> MARRIAGE OF |) | Appeal from the |
| JOSEPH H. LYON, |) | Circuit Court of |
| |) | Cook County |
| Petitioner-Appellant, |) | |
| |) | No. 99 D 30107 |
| v. |) | |
| |) | Honorable |
| JULIA LYON, |) | Elizabeth Loreda Rivera and |
| |) | Celia G. Gamrath, |
| Respondent-Appellee. |) | Judges, Presiding. |

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Simon and Justice Liu concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's orders denying petitioner's motions for a continued trial date are affirmed.

¶ 2 Petitioner, Joseph Lyon, appeals from the trial court's denial of his second and third motions to continue trial in this post-decree matter. Joseph argues that the outcome of the trial was in respondent's favor because Joseph's counsel was not given sufficient time to investigate his defense, review the court documents and prepare Joseph for trial. For the following reasons,

we affirm.

¶ 3

BACKGROUND

¶ 4 The parties were married in 1984 and three children were born to the marriage. In 1999, Joseph filed a petition for dissolution of marriage. Later that year, the circuit court entered a judgment for dissolution of marriage which incorporated the parties' property settlement agreement and joint parenting agreement.

¶ 5 In 2006, Joseph was convicted of aggravated kidnapping and other Class X felonies involving Julia and one of the children. Joseph was sentenced to a term of over 100 years' imprisonment and he has been incarcerated ever since.

¶ 6 In October 2010, Julia petitioned the circuit court for an order requiring Joseph to reimburse her for child related expenses incurred between the years 2000 to 2009 and for the issuance of a deed transferring Joseph's remaining 25% interest in the former marital home to Julia.

¶ 7 Joseph was served with a copy of the petition and filed a *pro se* answer to the petition. Joseph asserted that as an incarcerated person he did not have a copy of the divorce decree and that Julia's petition should be dismissed. Joseph also filed a motion for sanctions arguing that Julia's counsel had not provided him with sufficient notice prior to court hearings. On two occasions, Joseph requested in writing that the trial court appoint counsel to defend him.

¶ 8 Julia's petition was set for hearing and trial for November 22, 2011. On October 6, 2011, an attorney filed an appearance on behalf of Joseph. Shortly thereafter, Joseph acting *pro se* filed a request for a continued trial date because he had not been able to prepare for trial and believed there were additional documents necessary for his defense which he needed to obtain. Joseph's

counsel filed a motion to strike Joseph's *pro se* motion, which was denied.

¶ 9 On November 3, 2011, Joseph's counsel filed a motion requesting the trial be continued for 120 days because he did not have full copies of the court documents from Joseph and the clerk's office was obtaining the case file. After hearing, the circuit court granted the motion in part and reset the trial for January 24, 2012. Later, the trial court entered an agreed order allowing Joseph's counsel to review Julia's copy of the relevant court documents the following day.

¶ 10 On January 13, 2012, Joseph's counsel filed a second motion to continue the trial arguing that Joseph had defenses and a counterclaim which needed to be investigated. This motion was denied. On the day of trial, Joseph's counsel filed an emergency motion to continue the trial for 60 days and argued that he needed additional time to review the documents obtained from opposing counsel, to prepare Joseph for trial and to seek discovery. This motion was also denied.

¶ 11 The trial was held as scheduled, spanning two days. Both Julia and Joseph were present and testified. On February 7, 2012 the trial court entered a final order on Julia's petition. The trial court found Julia's testimony credible and Joseph's testimony not credible. The trial court rejected Joseph's arguments that he was not obligated to pay the expenses which the parties had agreed to share equally pursuant to the property settlement agreement and joint parenting agreement. Although Joseph testified that he contributed in part to certain of the expenses prior to going to prison, he did not have proof of payment and suggested there "might" be proof in storage boxes held by a relative. The trial court found that Joseph's testimony as to partial payment "was not specific" and there was "no proof to substantiate his claim."

¶ 12 The trial court found in favor of Julia, in part, and ordered Joseph to pay her \$43,795.58

for child related expenses and \$15,717.12 for her attorney fees. However, the trial court rejected Julia's request to divest Joseph of his interest in the marital home without payment and ordered Julia to pay Joseph \$75,000 in return for the execution of a quit claim deed transferring Joseph's interest in the home to Julia. The trial court ordered that in setting off these judgments against the other, Julia owed Joseph a net amount of \$15,491.70. This appeal followed.

¶ 13 ANALYSIS

¶ 14 Joseph argues that the trial court abused its discretion by denying his second and third motions for a continued trial date. He argues that because the trial proceeded as scheduled, he was unable to sufficiently prepare for trial and as a result the trial court ruled in Julia's favor.

¶ 15 A litigant does not have an absolute right to a continuance. *K&K Iron Works, Inc. v. Marc Realty, LLC*, 2014 IL App (1st) 133688, ¶ 22. "The decision to grant or deny a motion for a continuance is within the sound discretion of the trial court and will not be disturbed on appeal 'unless it has resulted in a palpable injustice or constitutes a manifest abuse of discretion.' " *Id.* Section 2-1007 of the Illinois Code of Civil Procedure provides that a litigant may be granted additional time to do any act, take any step, or proceeding prior to judgment, if good cause is shown. 735 ILCS 5/2-1008 (West 2012). However, a litigant that seeks a continuance on the day of trial must provide the trial court with "especially grave reasons for a continuance." *In re Marriage of Ward*, 282 Ill. App. 3d 423, 430 (1996)

¶ 16 Where a trial court's ruling is discretionary, that ruling will not be reversed absent a sufficient record showing the basis for the trial court's decision. *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984). The appellant has the burden to provide us with a sufficient record to support the claims of error. *Id.* at 391-92. Without such a record, it is presumed that the order entered by the

trial court conforms to the law and has a sufficient factual basis. *Id.*

¶ 17 In this case, the trial court held hearings on Joseph's second and third motions for a continuance, however, the record does not contain any transcripts of these hearings, nor does it contain a substitute report of proceedings pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Without a report of proceedings or bystander's report, we cannot know the arguments presented at the hearings or the reasoning of the trial court in making its rulings. Therefore, under *Foutch*, we must presume that the trial court acted in conformity with the law and had a sufficient basis in the record for its rulings. *Id.*

¶ 18 CONCLUSION

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 20 Affirmed.