SECOND DIVISION
March 10, 2015

No. 1-13-0489

DONNA GUERIN,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
v.	)	No. 10 D 430213
	)	
ANTHONY SMITH,	)	Honorable
	)	Daniel Miranda,
Respondent-Appellee.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court's entry of judgment of dissolution of marriage is affirmed where it had jurisdiction to enter the judgment and appellant failed to submit a sufficient record on appeal for this court to review the remaining issues presented.

¶ 2 Petitioner Donna Guerin, *pro se*, appeals from the trial court's entry of judgment of dissolution of marriage which incorporated a "marital settlement agreement." Petitioner argues that she never agreed to the terms of the "agreement"; the distribution of property listed in the "agreement" is unconscionable and an evidentiary hearing should be held to resolve the parties' property dispute. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The parties were married on June 26, 2004 and separated on March 31, 2010. Two months later, Donna, through counsel, filed a petition for dissolution of marriage. Respondent, Anthony Smith, was served and appeared through counsel. Donna's first attorney withdrew in August 2010 and a second attorney filed an appearance on Donna's behalf.

¶ 5 In February 2011, each party filed pretrial memoranda listing their respective assets and debts. The memoranda are summarized as follows. During the marriage, Donna sustained injuries that caused her to be disabled and unable to work. She receives monthly social security disability benefits and other income in the amount of $2,006.00. Her estimated monthly expenses are $2,704.70. She estimates that she owes her divorce attorneys approximately $47,000.00 in fees. During the pendency of the divorce litigation, she received a one-time lump sum "disability payment" of $30,000 and maintained two claims pending before the Illinois Worker's Compensation Commission.

¶ 6 Anthony, a history teacher, has a gross monthly income of $7,013.77. He estimates the value of the marital assets at $90,800.00 and the value of the nonmarital assets at $136,626.37. His total debts are $216,532.00, including approximately $100,000.00 in revolving marital credit card debt. He also has negative equity in their residence, which he solely owned prior to the marriage.

¶ 7 Donna's second counsel withdrew in July 2011. From August 2011 through the conclusion of the proceedings Donna participated as a *pro se* litigant.

¶ 8 On August 29 and October 31, 2011, the trial court ordered Anthony, his attorney and Donna to participate in a conference call to discuss the issues of marital debt, maintenance and

distribution of Anthony's pension. The parties did not reach an agreement. As a result, the trial court scheduled a pretrial conference to resolve those issues and the parties re-filed their pretrial memoranda.

¶ 9 A hearing held on December 13, 2011, resulted in an order apportioning the parties' property. There is no transcript of the hearing or report of proceedings in the appellate record. The December 13, 2011 order provides: (1) each party was responsible for their own attorney fees; (2) Anthony retains sole ownership of the real estate; (3) the parties' split equally Anthony's pension for the period of the marriage, subject to prove-up; (4) Donna's worker's compensation claims are marital property and shall be divided with one-half to each party; (5) Anthony receives a one-third portion from Donna's other pending "disability claims"; (6) Donna pays Anthony one-third of the $30,000 lump sum "disability payment" paid out during the pendency of the divorce litigation; (7) Anthony is responsible for two-thirds and Donna is responsible for one-third of the revolving credit card debt; and (8) neither party is entitled to maintenance. Final resolution of Anthony's pension was continued for final prove-up to May 10, 2012.

¶ 10 After a hearing on May 10, 2012, the trial court entered an order modifying the December 13, 2011 order as it related to Anthony's pension, providing the "Court hav[ing] heard evidence on the pension amounts hereby awards the entire pension to Anthony Smith." The trial court further modified the December 13, 2011 order that allocated one-third of the revolving credit card debt to allocate 100% of the revolving credit card debt to Anthony. The hearing for the final prove-up and dissolution was eventually scheduled for August 7, 2012.

¶ 11 Shortly before August 7, Anthony filed a "motion to clarify the issues to be set for trial." In the motion, Anthony argued that the trial court had already divided the parties' property and

the court had ordered Anthony's counsel to memorialize the court's previous findings regarding the property allocation. Counsel prepared a "marital settlement agreement" incorporating the court's prior rulings but Donna "was unable or unwilling to articulate changes to the [MSA] and " 'demands trial.' " Anthony argued that he needed to know what issues remained so that he could prepare for the final prove-up and dissolution hearing scheduled for August 7.

¶ 12 On August 7, 2012, the trial court held a hearing on the prove-up and Anthony's motion. There is no transcript of the hearing or a substitute report of proceedings in the appellate record. However, the record does contain the judgment of dissolution of marriage. In relevant part, the judgment provides that the "court heard evidence" and it was "presented a written Marital Settlement Agreement for its consideration;" and the court "has considered the economic circumstances of the parties and other relevant evidence and finds that the Agreement is fair and equitable, is not unconscionable, and is approved by this Court." The judgment continues: "BASED ON THE ORAL TESTIMONY AND THE MARITAL SETTLEMENT AGREEMENT OF THE PARTIES, *incorporated herein*, IT IS HEREBY ORDERED" followed by language granting the dissolution petition and a finding incorporating the MSA into the judgment. The incorporated MSA delineated the division of the parties' property pursuant to the court's December 13, 2011 order as modified by the May 10, 2012 order. The incorporated MSA provided: Anthony was solely responsible for the $100,000.00 revolving marital debt; Anthony retains his pension with no distribution to Donna; Anthony was awarded 50% of Donna's pending worker's compensation claims; and Donna was to make a $10,000.00 payment to Anthony for his one-third share of Donna's previously recovered $30,000.00 lump sum disability payment. The MSA also provided that Anthony retains sole ownership of the home; the

household goods were previously divided between the parties; each party "waives, remises, and releases" all claims for "maintenance, alimony, and/or spousal support"; and, each party is responsible for their own health care coverage and tax filings.

¶ 13 We note that an examination of the eight page MSA shows that it was clearly prepared in advance of August 7, 2012: each page has a signature line before the initials of "DG" and "AS" with only the handwritten initials of "AJS" entered; some typed items are stricken completely and some typed provisions are stricken with a correction inserted in its place; and, the last page is signed and dated by respondent with the typewritten judgment showing it was prepared and printed by Anthony's attorneys and the stamp of the circuit court clerk is properly affixed to the judgment.

¶ 14 Donna secured new counsel and filed a motion to vacate the judgment of dissolution of marriage and property distribution arguing that it was improper to incorporate the MSA into the judgment. Donna argued that a "proper document" would have been one that reflected the court's findings after a trial; the judgment improperly incorporated the MSA to which she never agreed; the trial court was required to hold an evidentiary hearing to apportion the parties' property; and the trial court did not consider all required factors when dividing the property after the December 2011 and May 2012 hearings and, therefore, those orders should not be binding. Donna attached an affidavit to her motion stating that she had not seen or reviewed the MSA prior to August 7, 2012 and that she never agreed to its terms.

¶ 15 The trial court denied Donna's motion. In doing so, the trial court explained that because it was already aware of all the matters raised in the motion, no evidentiary hearing would be held on Donna's contentions. The trial court found that although the document was styled as an

agreement, it was in fact a summary of the trial court's rulings prepared by Anthony's attorney at the trial court's direction. Regarding the name of the document, the court stated "[c]all it what you wish." The court further explained that the incorporated MSA was accurate and "[t]hat's exactly what it should have been called. But it doesn't change the fact what's presented in the document reflects all of the Court's findings." The trial court additionally explained that the MSA "reflects what the Court's rulings were after, as I say, years of familiarity with the file, after years of rulings on issues in the file and after hearing the testimony." Lastly, the trial court stated that its rulings were based on a consideration of " all the statutory factors and ***all of the circumstances."

¶ 16 Donna timely filed this appeal.

¶ 17 ANALYSIS

¶ 18 Donna first argues that the trial court improperly entered the judgment of dissolution of marriage *sua sponte* and without jurisdiction. Donna contends that the court acted *sua sponte* because there was no pleading in the record specifically requesting that judgment be entered on August 7, 2012 and therefore, the trial court did not have jurisdiction to enter the final judgment on that date. We find no factual or legal basis to support Donna's argument.

¶ 19 A petition to dissolve a marriage requests that a trial court resolve "a claim for dissolution." *In re Marriage of Leopando*, 96 Ill. 2d 114, 119 (1983). Once the respondent has been served a divorce petition, the trial court has jurisdiction to resolve that claim (*In re Marriage of Gorman*, 284 Ill. App. 3d 171, 178 (1996)) and its ancillary issues, such as property division and maintenance, which are a part of the greater dissolution claim (*In re Marriage of Duggan*, 376 Ill. App. 3d 725, 735 (2007)).

¶ 20 The record establishes that Donna filed a petition to dissolve the marriage; Anthony was served and filed an appearance; the parties conducted discovery and filed their pretrial memoranda; the trial court held hearings to resolve the property distribution issues; and once those issues were resolved, after hearing, the trial court then entered final judgment on Donna's petition. The trial court scheduled the hearing for the "final prove up and dissolution" for June 28, 2012 and on that date continued the hearing for "prove up – dissolution" for August 7, 2012. We note that trial courts routinely enter judgment dissolving a marriage on the same day that a prove-up is held (*In re Marriage of Harnack*, 2014 IL App (1st) 121424, ¶ 37; *In re Marriage of Sassano*, 337 Ill. App. 3d 186, 189 (2003)). The court clearly had jurisdiction and authority to enter final judgment dissolving the parties' marriage after the August 7, 2012 prove-up hearing.

¶ 21 As to Donna's remaining claims, she has not provided us with a sufficient record to properly evaluate the merits of those claims. Donna contends that the trial court improperly entered the judgment of dissolution of marriage which incorporated a "settlement agreement" to which she never agreed and otherwise made an unconscionable division of the parties' property. She also contends that the trial court erred in entering the final judgment without holding an evidentiary hearing regarding the parties' marital property. The gist of her complaint is that there was no hearing on the date the final judgment of dissolution was entered. Respondent takes a diametrically opposite position arguing that the orders clearly reflect that the court heard evidence and considered all that is required to be considered in this regard.

¶ 22 The judgment order Donna complains of was entered after the final prove-up on August 7, 2012. Donna argues that no hearing was held, no evidence was presented and no testimony was given. Anthony contests these assertions. The trial judge, when later denying Donna's

motion to vacate the judgment, explained that Donna's petition included "misinformed information" and "matters [which] did not occur in this [c]ourt." The trial judge further explained that "[o]n August 7th the parties were present, the parties were sworn, testimony was given, there was a trial" after which "[t]he [c]ourt made certain findings and rulings."

¶ 23 Donna has not provided us with a transcript or substitute report of proceedings of the August 7, 2012, hearing pursuant to Illinois Supreme Court Rule 323 (eff. Dec. 13, 2005). Our 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, 432 (2001) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). It is incumbent upon Donna, as the party claiming error, to provide us with a sufficient record in order to review her claim of error. *Foutch*, 99 Ill. 2d at 391-92. In the absence of a sufficient record, we must presume the trial court's findings conformed to the law and had a sufficient factual basis. *Id.* Any doubts which arise from the absence of a sufficient record will be construed against the appellant. *Id.* While "*pro se* litigants are held to a lesser standard in complying with the rules for appealing to the appellate court," all litigants must provide us with an adequate record to review the issues raised on appeal. *Rock Island County v. Boalbey*, 242 Ill. App. 3d 461, 462 (1993).

¶ 24 From what we can discern from the record, it is clear that the parties submitted pretrial memoranda to the court disclosing their property holdings and financial conditions. The trial court held at least two hearings after which it entered orders apportioning the parties' property. The court instructed respondent's counsel to prepare a MSA incorporating the court's earlier findings and respondent's counsel then unsuccessfully attempted to get Donna to agree with his written summary. The court was presented with a document that admittedly is not an "agreed"

document but, as the court noted, "it doesn't change the fact what's presented in the document reflects all of the Court's findings." The import of the incorporated MSA is the court's determination of how certain assets and certain debts were finally apportioned between the parties, not what the "agreement" is called or whether it was "agreed to." It is well established that we look to the substance of an order, not its form or label, to determine its character and effect. *Gallaher v. Hasbrouk*, 2013 IL App (1st) 122969, ¶24; *In re Marriage of Eckersall*, 2014 IL App (1st) 1332223, ¶ 19-20.

¶ 25 From our review of the record before us, we have no doubt the trial court was fully versed in the facts and circumstances relevant to the allocation of the parties assets and liabilities and that the judgment was thoughtful and in compliance with the law. The record does not contain a transcript or substitute report of proceedings for the hearings on December 13, 2011 and the final hearing on August 7, 2012. The judgment order from which Donna complains states that it is based on the "oral testimony" of the parties, which we must accept as accurate. We simply cannot accept her contention that no testimony was taken where the court's judgment order states otherwise. Where, as here, "the record does not reflect what evidence the trial court heard *** we must presume the trial court had ample grounds supporting its determination." *Rock Island County*, 242 Ill. App. 3d at 462. Because the judgment order states that testimony was taken, absent a transcript or an acceptable substitute, we cannot know whether Donna's arguments concerning the fairness of the final allocation of property were presented to the court, the reasons for the trial court's rulings or whether her arguments merit reconsideration after review by this court. "Where 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."

Webster, 195 Ill. 2d at 432. Therefore, under these circumstances, we must presume that the trial court acted in conformity with the law and had a sufficient basis in the record for its rulings. *Foutch*, 99 Ill. 2d at 391-92.

¶ 26 CONCLUSION

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

¶ 28 Affirmed.