2015 IL App (1st) 133722-U
No. 1-13-3722

THIRD DIVISION
Order filed September 30, 2015
Modified upon denial of rehearing January 13, 2016

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re the Marriage of:	)	Appeal from the Circuit Court
	)	of Cook County.
JACQUELINE AMMAR,	)	
	)	
Petitioner-Appellee,	)	No. 10 D 698
	)	
v.	)	
	)	The Honorable
ESSAM A. AMMAR,	)	Elizabeth Loredo Rivera,
	)	Judge Presiding.
Respondent-Appellant.	)	

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 Held: (1) There was no merit to the husband's argument that a marital settlement agreement should be vacated as procedurally unconscionable because the husband was on "psychostimulant medication" at the time he entered into the agreement, the agreement was "hastily contrived" and he did not review it, and because the court and his counsel coerced him into entering into the agreement. The husband did not present any objective evidence at the motion to vacate that he was on any medication at the time the marital settlement agreement was reached and the husband's sworn testimony at the prove-up indicated he reviewed the marital settlement agreement with his counsel, that he understood he was not required to accept the circuit court's recommendation, that no one coerced him, and that he accepted the agreement. (2) There similarly was no merit to the husband's argument that the marital settlement agreement

should be vacated as substantively unconscionable because the asset division was "wildly unfair." Although the wife was awarded the marital residence and half of the husband's IRA, the wife also assumed her own much larger debt and waived a dissipation claim of $600,000 that the husband had transferred to Egypt, the parties were married for 25 years, and the husband did not present any evidence as to what portion of his IRA he claimed was non-marital. The husband indicated that he accepted the agreement. (3) The husband's motion to vacate and appeal were meritless, frivolous, and not taken in good faith but, rather, to harass the wife and cause unnecessary delay or increase in the cost of litigation. Because of the husband's frivolous appeal, the judgment was stayed and he continued to reside in the parties' residence that had been awarded to the wife, forcing the wife to make alternative living arrangements. The court awarded the wife her attorney fees and expenses for the husband's motion to vacate heard in the circuit court below, as well as all her attorney fees and expenses incurred by this appeal pursuant to Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994).

¶ 2 BACKGROUND

¶ 3 Respondent-Appellant Essam Ammar appeals the judgment entered by the circuit court on a marital settlement agreement in the dissolution proceedings below, raising numerous arguments regarding alleged "fraudulent concealment," procedural unconscionability, and substantive unconscionability of the marital settlement agreement and the judgment. We address this appeal as a summary order because we unanimously determine that the disposition is clearly controlled by case law (Ill. S. Ct. R. 23(c)(2) (eff. July 1, 2011)), no error of law appears on the record (Ill. S. Ct. R. 23(c)(6) (eff. July 1, 2011)), and the trial court did not abuse its discretion in entering judgment on the marital settlement agreement and in denying Essam's motion to vacate the judgment. Ill. S. Ct. R. 23(c)(7) (eff. July 1, 2011).

¶ 4 The parties were married on November 2, 1985. Petitioner Jacqueline Ammar filed her petition for dissolution of marriage on January 25, 2010. The parties engaged in extensive litigation and discovery for more than three years in divorce proceedings which resulted in the entry of a judgment on February 14, 2013 for dissolution of marriage incorporating a marital settlement agreement. The court made its recommendation, which was largely represented by the settlement agreement entered into by the parties after the pre-trial and settlement conference with

the circuit court. The parties' attorneys spent numerous hours drafting and editing the agreement. Essam's attorney went over the entire agreement with Essam prior to the prove-up hearing, and during a meeting at Essam's counsel's office during which his attorney displayed a projection of the agreement while they reviewed it. The marital settlement agreement provided that "each party has entered into this Agreement freely and voluntarily and that each party represents and warrants that the terms and provisions of this Agreement are fair and equitable to each of the parties in light of the respective and collective circumstances of the parties."

¶ 5 Under the terms of the marital settlement agreement, both Essam and petitioner Jacqueline waived maintenance, agreed that each party was responsible for their own health insurance, medical expenses, and life insurance policies. Jacqueline was awarded the parties' real estate located at 900 N. Lake Shore Drive, Unit 709, Chicago, Illinois. This property was acquired by Essam before the marriage but became the marital home. At the time of the judgment, Jacqueline had $14,494 in retirement funds, and Essam had $231,686 in retirement funds in his individual retirement account (IRA). The marital settlement agreement awarded Jacqueline half of Essam's retirement funds, less half of Jacqueline's retirement funds. The parties agreed to be responsible for their respective debts. Jacqueline's debts totaled $205,548.31, and Essam's debts totaled $51,126.

¶ 6 One of the provisions of the marital settlement agreement provided, in relevant part:

> "Except for the distribution and rollover to JACQUELINE pursuant to this Article, ESSAM is enjoined from taking any distributions or loans from his IRAs until any and all judgment and or liens on Unit 709 pursuant to the terms of this Agreement are satisfied and proof of the release of the liens is provided to JACQUELINE. In addition, except as otherwise set forth in this Agreement, ESSAM is enjoined from taking any loans or

distribution from his IRAs that would result in a balance in his account(s) to be less than $12,000 [sic] until all condominium assessments are paid during the time he lives in Unit 709, the second installment of the 2012 real estate taxes (that are paid in 2013) are paid and ESSAM has vacated the premises and turn [sic] over the keys at the inspection on August 15, 2013."

¶ 7 Essam initialed every page of the marital settlement agreement and signed it.

¶ 8 At the prove-up hearing, Essam testified that he understood and accepted the agreement, and that he was entering into the agreement freely and voluntarily. Essam also testified that he would cooperate with rolling over the portion of his IRA into Jacqueline's IRA as set forth in the marital settlement agreement. After the prove-up hearing, the court entered judgment of dissolution incorporating the martial settlement agreement.

¶ 9 On March 15, 2013, Essam filed a motion to vacate the judgment through new counsel. Essam argued that he was taking psychostimulant medication at the time the marital settlement agreement was reached, the marital settlement agreement was procedurally unconscionable, that he was coerced and under duress by his attorney who pressured him to enter into the agreement, and that the settlement's asset division was substantively unconscionable and "wildly unfair."

¶ 10 The court held a hearing and Essam testified. Essam admitted that the cost and uncertainty of going to trial influenced him to enter into the settlement agreement. Essam did not present any medical evidence regarding his claim that he was on medication, and there was no evidence, other than Essam's testimony, that he was under any duress or coercion. The court found that Essam's claim about his attorney's coercion was fabricated, and that his claim regarding being on medication was also fabricated and that Essam lacked credibility. The court further found that Essam failed to meet his burden of proving that the condominium on Lake

Shore Drive and his IRA were non-marital property. The court denied the motion to vacate in an order entered on November 26, 2013. Essam timely appealed.

¶ 11 ANALYSIS

¶ 12 Jacqueline argues initially that this appeal should be dismissed because Essam did not file a proper record on appeal, but Essam filed the certified record on February 10, 2014.

¶ 13 Jacqueline also argues the appeal should be dismissed because Essam's brief on appeal violates Illinois Supreme Court Rules 341 and 342. See Ill. S. Ct. R. 341(h) (eff. Feb. 6, 2013) (stating the organizational requirements for the appellant's brief, and requiring citations to the record for both the statement of facts and the argument portions of the appellant's brief); Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005 (requiring an appendix and a complete table of contents of the record on appeal).

¶ 14 We note that Essam's statement of facts does not contain citations for all of the facts set forth. See Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008) (statement of facts must make "appropriate reference to the pages of the record on appeal"). In addition, the statement of facts includes improper argument and comments. See *id*. (the facts shall be "stated accurately and fairly without argument or comment"). Last, Essam's appendix also does not comply with Supreme Court Rules, as it numbers only a portion of the pages in the record and fails to include an index to the record on appeal, which consists of seventeen (17) volumes. See Ill. S. Ct. R. 341(h)(9) (eff. July 1, 2008); Ill. S. Ct. R. 342(a) (eff. Jan.1, 2005). The procedural rules governing the format and content of appellate briefs are mandatory. *Voris v. Voris,* 2011 IL App (1st) 103814, ¶ 8. Where a party fails to comply with the Supreme Court Rules, his or her appeal "is subject to dismissal." *Voris,* 2011 IL App (1st) 103814, ¶ 8. In reply, Essam seeks leave to file another

brief to comply with the Supreme Court Rules should this court determine that dismissal is warranted.

¶ 15 In our discretion, however, we consider this appeal because it is apparent that the issues are easily disposed of, as the record demonstrates Essam's arguments have no merit.

¶ 16 Essam filed a motion to vacate the marital settlement agreement within 30 days of the judgment. "[A] property settlement * * * which has been approved by the court and incorporated in the judgment of dissolution[ ] becomes merged in the judgment, and the rights of the parties thereafter rest on the judgment." *In re Marriage of McLauchlan*, 2012 IL App (1st) 102114, ¶ 21 (quoting *In re Marriage of Hoffman*, 264 Ill. App. 3d 471, 474 (1994)). A party may move to vacate a judgment in cases tried without a jury within 30 days pursuant to section 2-1203. Section 2-1203(a) provides that "[i]n all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief. 735 ILCS 5/2-1203(a) (West 2012).

¶ 17 " 'A marital settlement agreement is construed in the same manner [as] any other contract.' " *In re Marriage of Doermer*, 2011 IL App (1st) 101567, ¶ 27 (quoting *Blum v. Koster*, 235 Ill. 2d 21 (2009)). But, a marital settlement agreement "is not typically subject to appellate review because an agreed order 'is a recordation of the agreement between the parties and *** not a judicial determination of the parties' rights.' " *In re Marriage of Gibson-Terry*, 325 Ill. App. 3d 317, 325 (2001). As opposed to an order of the court, which is a judicial determination on an issue, a marital settlement agreement represents the parties' own agreement as to their rights. *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶ 13. "When a party seeks to vacate a settlement incorporated into a judgment for dissolution of marriage, all presumptions are in favor

of the validity of the settlement." *In re Marriage of Bielawski*, 328 Ill. App. 3d 243, 251 (2002) (citing *In re Marriage of Gorman*, 284 Ill. App. 3d 171, 180 (1996)).

¶ 18 To vacate a marital settlement agreement, the movant must show that the agreement is unconscionable. " ' "[F]airness" and other similar standards * * * have been replaced by the standard of unconscionability.' " *In re Marriage of Foster*, 115 Ill. App. 3d 969, 971 (1983) (quoting Ill.Ann.Stat., ch. 40, par. 502, Historical & Practice Notes, at 400 (Smith–Hurd 1980)). The Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/101 *et seq*. (West 2012)) specifically provides: "The terms of the agreement, except those providing for the support, custody and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable." 750 ILCS 5/502(b) (West 2012).

¶ 19 There are two types of unconscionability: (1) procedural unconscionability, which "involves impropriety during the process of forming a contract that deprives a party of a meaningful choice;" and (2) substantive unconscionability, which "relates to situations where a clause or term in a contract is allegedly one-sided or overly harsh." *In re Gibson-Terry & Terry*, 325 Ill. App. 3d 317, 326 (2001) (quoting *Bishop v. We Care Hair Development Corp*., 316 Ill. App. 3d 1182, 1196 (2000)).

¶ 20 The determination of whether a valid settlement occurred is in the trial court's discretion and we will not reverse a court's decision unless it is contrary to the manifest weight of the evidence. *Kim v. Alvey, Inc*., 322 Ill. App. 3d 657 (2001). The trial court abuses its discretion when its "ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20 (2000). We will reverse the

decision as against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or where those findings are palpably erroneous or wholly unwarranted. *K4 Enterprises, Inc. v. Grater, Inc*, 394 Ill. App. 3d 307 (2009).

¶ 21 Essam argues the judgment incorporating the marital settlement agreement should be vacated because the marital settlement agreement is both (I) procedurally unconscionable and (II) substantively unconscionable. Jacqueline argues (III) that Essam's appeal is frivolous, and not taken in good faith but, rather, to harass the wife and cause unnecessary delay or increase in the cost of litigation, thereby justifying sanctions pursuant to Illinois Supreme Court Rule 375(b) (Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994)).

¶ 22 I. Procedural Unconscionability

¶ 23 Essam first argues that the marital settlement agreement was procedurally unconscionable because it was "hastily contrived" and procured through coercion, fraud, and duress. Essam argues that his previous counsel coerced him into signing the marital settlement agreement, and that he was in a "mental state of total collapse at the time of the prove-up," and maintains that he did not see the marital settlement agreement that was emailed to him that morning until he returned home after signing the agreement and after the prove-up.

¶ 24 The Illinois Supreme Court has defined procedural unconscionability as "some impropriety during the process of forming the contract depriving a party of meaningful choice." *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1, 23 (2006) (citing *Razor v. Hyundai Motor America*, 222 Ill. 2d 75, 100 (2006)). Coercion and duress have been defined as "the imposition, oppression, undue influence, or the taking of undue advantage of the stress of another, whereby that person is deprived of the exercise of her free will." *In re Marriage of Flynn*, 232 Ill. App. 3d 394, 399 (1992). See also *In re Marriage of Tabassum*, 377 Ill. App. 3d 761, 775 (2007).

However, a "stressful" or high-pressure situation is insufficient to rise to the level of duress. *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 47. Duress must involve a threat that is legally wrongful. *In re Marriage of Tabassum*, 377 Ill. App. 3d 761, 775 (2007). The party asserting duress bears the burden of proving it by clear and convincing evidence. *In re Marriage of Gorman*, 284 Ill. App. 3d at 180; *In re Marriage of Morris*, 147 Ill. App. 3d 380, 392 (1986).

¶ 25 We first find there is no objective evidence in the record that Essam was on any alleged psychostimulant medication at the time the marital settlement agreement was reached. Essam presented only his own self-serving testimony at the hearing on his motion to vacate and did not present any medical evidence to corroborate his contention that he was under the influence of medication at the time he entered into the marital settlement agreement.

¶ 26 Our review of the record also establishes that there is no evidence, let alone clear and convincing evidence, that would rise to the level of coercion, fraud or duress to justify vacating the settlement agreement. Essam's sworn testimony, under oath, was that he reviewed the marital settlement agreement and there was no indication by Essam of any coercion, fraud or duress in his testimony. Essam was questioned by his counsel regarding reviewing the marital settlement agreement early that morning with his counsel:

"Q: And then the Levin/Brend firm worked until 11:00 o'clock last night drafting this [marital] settlement agreement, correct?

A: That's what you said.

Q: Which was e-mailed to me, correct, and then I forwarded the document to you?

A: This morning, early in the morning. Yes.

Q: Before 6:00 a.m.?

A: Yes.

Q: Okay. So we were on the phone from 6:00 a.m. on –

A: Yes.

Q: -- and then you came down in person and we went through it again?

A: Yes.

Q: And then we came over to court, correct?

A: Yes.

Q: And then we did some more work here in court over the language?

A: Yes.

Q: Then we went back to the Levin and Brend firm, correct?

A: Yes."

¶ 27 Essam also acknowledged, upon questioning by his counsel, that he had the opportunity to reviewed the entire marital settlement agreement with his counsel, and that he accepted it:

"Q: You have had the opportunity to review the entire agreement; is that correct?

A: Yes.

Q: In fact, as I stated earlier, we were at my office. We put it on the big screen. In fact, you even had your own hard copy to look at, correct?

A: Yes.

Q: Do you believe the terms of this agreement are fair and equitable?

A: I accept it.

Q: Do you believe – And you understand that you are bound by the terms of this agreement; is that correct?

A: Yes. Yes."

¶ 28 Though Essam argues he was basically forced by the court to accept the court's recommendation regarding the marital settlement agreement, the circuit court explained to the parties that the recommendations made at the pre-trial and settlement conference were only recommendations which both parties were free to reject. Essam testified that he understood he was not required to accept the circuit court's recommendation.

¶ 29 There is also no evidence to support Essam's claim that he was coerced by his own attorney into entering the settlement agreement. The case of *In re Gibson-Terry & Terry*, 325 Ill. App. 3d 317 (2001) is instructive. In the husband's motion to vacate, he alleged that he did not authorize his attorney to negotiate a marital settlement agreement on his behalf and he did not understand that a marital settlement agreement was being negotiated, nor did he agree to the provisions of the marital settlement agreement. *In re Gibson-Terry & Terry*, 325 Ill. App. 3d at 321. But the record revealed that the husband was present in court when his attorney entered into the property settlement agreement on his behalf and during the course of the prove-up hearing the husband did not voice an objection to the agreement, did not inform the court that he misunderstood any part of the agreement, and in fact, participated in the recitation of the agreement by clarifying terms. At the hearing, the husband had the opportunity to contest the marital settlement agreement and he did not do so. *In re Gibson-Terry & Terry*, 325 Ill. App. 3d at 322-23. The court held that "[b]ecause he sat silently and permitted his attorney to enter into the property settlement agreement on his behalf, Raymond is estopped from denying the existence of the property settlement agreement." *In re Gibson-Terry & Terry*, 325 Ill. App. 3d at 323.

¶ 30 Similarly here, during the prove-up hearing Essam testified under oath that he accepted the agreement, and at no point did Essam ever indicate any objection to the agreement or indicate

that his attorney coerced him or that he was under any kind of duress. Essam further emphatically testified, upon questioning by his counsel, that no one coerced him into signing the agreement:

"Q: Did anyone force or coerce you into entering into this agreement?

A: Absolutely not.

Q: Is your entry into this agreement a free and voluntary act on your part?

A: Yes.

Q: Without coercion by anyone?

A: Yes."

¶ 31 In its November 26, 2013 order denying Essam's motion to vacate the judgment, the circuit court noted "that ESSAM testified at the hearing on his Motion to Vacate that everything he said at the prove-up was true at the time he said it." The court also noted in its order that Essam "also admitted that the cost of going to trial and the uncertainty of going to trial influenced him to settle on the terms of the MSA [marital settlement agreement]." Although Essam argues that there was no merit to Jacqueline's contention regarding his dissipation of assets caused by his large transfers of money to Egypt because those transfers allegedly occurred over 10 years ago, Essam acknowledged in his testimony at the hearing on the motion to vacate that this issue could be a problem if he chose to go to trial. Thus, Essam acknowledged his choice in settling rather than going to trial.

¶ 32 Essam further argues that there was an injunction "hidden" in the marital settlement agreement, prohibiting him from making any withdrawals from his IRA, in contravention of section 12-1006 of the Illinois Code of Civil Procedure, which exempts certain personal

property, including a debtor's interest in his retirement account, from enforcement of a judgment. See 735 ILCS 5/12-1006 (West 2012).

¶ 33 We first note the Essam's argument is not well-grounded because the marital settlement agreement incorporated into the judgment in this case is not a judgment in favor of a creditor. Rather, as explained above, a marital settlement agreement that is merged into a judgment is a contract entered into voluntarily by the parties. If the parties decide to settle their property rights by mutual agreement rather than by statute, they are bound to the terms of their agreement. *In re Marriage of McLauchlan*, 2012 IL App (1st) 102114, ¶ 21 (citing *Chodl v. Chodl*, 37 Ill. App. 3d 52, 53 (1976)).

¶ 34 Moreover, there was no concealment of this provision. "Fraudulent concealment," which may cause property settlement to be vacated, consists of affirmative acts or misrepresentations intended to exclude suspicion or prevent injury. *In re Marriage of Palacios*, 275 Ill. App. 3d 561, (1995), *appeal denied*, 165 Ill. 2d 554. There was no affirmative act or misrepresentation. Although Essam argues that this provision was "hidden" in the marital settlement agreement, he testified that his attorney in fact reviewed the marital settlement agreement with him, with both a projection of the agreement and a hard copy of the agreement. At the prove-up, Essam even asked questions to ensure certain changes were made to the agreement. The court noted in its order denying Essam's motion to vacate that "Essam exhibited an in depth understanding of the terms and intricacies of the MSA [marital settlement agreement] from memory." We also note that Essam initialed every page of the marital settlement agreement, include the pages containing this provision enjoining Essam from taking any withdrawals from his IRA until all liens on the Lake Shore Drive condominium and taxes are paid.

¶ 35 The record amply demonstrates that there is no merit to Essam's procedural unconscionability argument. All of Essam's conduct and sworn testimony indicates he reviewed the marital settlement agreement with his counsel, and that he freely and voluntarily entered into the marital settlement agreement to avoid trial and possible litigation of his dissipation of marital assets. See *In re Marriage of Haller*, 2012 IL App (5) 110478, ¶ 34 (rejecting the husband's claim of coercion and duress by the court's alleged pressure to settle and an allegedly hastily contrived settlement agreement where the record indicated that neither the court nor counsel subjected the husband to extreme pressure to settle, the parties negotiated at arm's length with aid of counsel, and the husband made statements on the record that he accepted the settlement agreement). See also *In re Marriage of Steichen*, 163 Ill.App.3d 1074, (1987) (held that the lack of evidence in dissolution proceedings that husband was placed under coercion or extreme pressure by his counsel or court to agree to property settlement, as well as husband's in-court statements affirming agreement and failing to object to terms when they were recited at hearing, demonstrated that husband freely agreed to settlement, and thus husband's petition to set settlement aside was denied).

¶ 36 It appears that Essam merely had a change of heart concerning the disposition of the Lake Shore Drive condominium to Jacqueline and the fact that Jacqueline would receive half of his IRA. "A court should not set aside a settlement agreement merely because one party has second thoughts." *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 214 (1994).

¶ 37 We hold the circuit court did not abuse its discretion in denying Essam's motion to vacate the judgment incorporating the marital settlement agreement based on any of Essam's alleged grounds of procedural unconscionability.

¶ 38 II. Substantive Unconscionability

¶ 39 Essam also argues that the marital settlement agreement was substantively unconscionable because Jacqueline was awarded the condominium at 900 N. Lake Shore Dr., Essam waived maintenance, and the asset division was "wildly unfair."

¶ 40 Section 503(d) of the Illinois Marriage and Dissolution of Marriage Act requires the division of marital property upon the dissolution of marriage. 750 ILCS 5/503(d) (West 2012). Marital property must be divided in "just proportions considering all relevant factors," including the duration of the marriage and the reasonable opportunity of each spouse for future acquisition of capital assets and income. 750 ILCS 5/503(d) (West 2012). "Just proportions" does not necessarily mean mathematical equality, but the distribution must be equitable under the circumstances. *In re Marriage of Morris,* 266 Ill. App. 3d 277 (1994). An agreement that favors one party over another is not necessarily unconscionable. *In re Marriage of Gorman,* 284 Ill. App. 3d at 181. "To rise to the level of being unconscionable, the settlement must be improvident, totally one-sided or oppressive." *Id.* at 182.

¶ 41 The circuit court rejected Essam's argument in his motion to vacate that the marital settlement agreement was substantively unconscionable, noting that Jacqueline assumed $205,000 in debt compared to the $51,000 in debt assumed by Essam, and that Jacqueline waived a dissipation claim of several hundred thousand dollars that Essam had transferred to Egypt. We agree with the circuit court's determination and hold that the terms themselves are not substantively unconscionable.

¶ 42 Essam argues that the court erred in barring Essam from presenting any evidence regarding the transfer of $600,000 to Egypt in three transfers in 2001 and 2002, and that Essam allegedly had evidence tracing those funds to non-marital assets. But Essam admits in his brief that he "doesn't have any record to present any more regarding the **USE** of the three separate

transfers "adding up to $600,000 and made more than a decade ago." (Emphasis in original.) Though Essam claims he has a form showing the full return of one of the three transfers for $225,000, and offers several convoluted explanations for these transfers, Essam chose not to proceed with that purported evidence and instead entered into the marital settlement agreement. He cannot argue the merits; he must show some fraud, duress or coercion, and there is none concerning his agreement to forego litigating the nature of the $600,000 in transfers.

¶ 43 Essam also argues he "doesn't know the basis on which the trial court made its determination that ESSAM's premarital IRA is now marital." Essam's argument regarding the statutory marital versus non-marital nature of his IRA is not a ground for relief because when parties "decide to settle their property rights by mutual agreement rather than by statute, they are bound to the terms of their agreement." *In re Marriage of McLauchlan*, 2012 IL App (1st) 102114, ¶ 21 (citing *Chodl v. Chodl*, 37 Ill. App. 3d 52, 53 (1976)).

¶ 44 Even under statute, marital property is "all property acquired by either spouse subsequent to the marriage." 750 ILCS 5/503(a) (West 1996). This encompasses pensions and other retirement accounts which accrue during a marriage. See *In re Marriage of Bielawski*, 328 Ill. App. 3d 243, 251 (2002) (citing *In re Marriage of Wenc*, 294 Ill. App. 3d 239 (1998)). The parties were married for 25 years. Essam did not present any evidence as to what portion of his IRA he claims is non-marital.

¶ 45 Further, while Jacqueline was awarded half of Essam's much larger IRA, she also agreed to be solely responsible her own much larger debt. The provision regarding the allocation of half of Essam's IRA to Jacqueline is not substantively unconscionable.

¶ 46 The record belies any claim by Essam regarding substantive unconscionability of the marital settlement agreement. At the prove-up Essam was specifically questioned by his counsel

whether he had any question regarding any provision of the marital settlement agreement, and was also questioned by the court, and Essam indicated that he believed the terms of the settlement were fair and equitable that he accepted the agreement:

"Q: Do you believe the terms of this agreement are fair and equitable?

A: I accept it.

Q: Do you believe – and you understand that you are bound by the terms of this agreement, is that correct?

A: Yes. Yes."

* * *

Q: Do you have any questions regarding any provision of this agreement?

A: Not at the moment.

Q: Okay.

THE COURT: Well this is the moment.

THE WITNESS: Your Honor, I accept it.

THE COURT: Okay."

¶ 47 Essam is bound by his own sworn testimony at the prove-up where he affirmatively testified that he had the opportunity to review the agreement, had no questions about any provisions, and that accepted the agreement. Essam has no evidence supporting his contentions and has failed to make the required showing to vacate the judgment entered on the martial settlement agreement. The circuit court did not abuse its discretion in denying Essam's motion to vacate the judgment of dissolution of marriage incorporating the marital settlement agreement. We find, as did the circuit court, that Essam's arguments are fabricated, as they have no support in the record and, in fact, are contradicted by Essam's own sworn testimony at the prove-up.

¶ 48 III. Sanctions

¶ 49 Jacqueline seeks sanctions against Essam, arguing that Essam's appeal is meritless, frivolous, and not taken in good faith but, rather, to harass Jacqueline and cause unnecessary delay or increase in the cost of litigation. Jacqueline argues that because of Essam's frivolous appeal, the judgment was stayed and he continued to reside in the parties' residence on Lake Shore Drive that had been awarded to Jacqueline, forcing her to make alternative living arrangements. We agree with Jacqueline.

¶ 50 Illinois Supreme Court Rule 375(b) provides, in relevant part:

> "(b) Appeal or Other Action Not Taken in Good Faith; Frivolous Appeals or Other Actions. If, after consideration of an appeal or other action pursued in a reviewing court, it is determined that the appeal or other action itself is frivolous, or that an appeal or other action was not taken in good faith, for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or the manner of prosecuting or defending the appeal or other action is for such purpose, an appropriate sanction may be imposed upon any party or the attorney or attorneys of the party or parties. An appeal or other action will be deemed frivolous where it is not reasonably well grounded in fact and not warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law. An appeal or other action will be deemed to have been taken or prosecuted for an improper purpose where the primary purpose of the appeal or other action is to delay, harass, or cause needless expense.
>
> Appropriate sanctions for violation of this section may include an order to pay to the other party or parties damages, the reasonable costs of the appeal or other action, and any

other expenses necessarily incurred by the filing of the appeal or other action, including reasonable attorney fees." Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994).

¶ 51 We determine that the motion to vacate and this appeal were frivolous because they were not reasonably well-grounded in fact or law and were not taken in good faith but merely to cause unnecessary delay and needless expense and hardship to Jacqueline. We therefore award Jacqueline her attorney fees and expenses for Essam's motion to vacate heard in the circuit court below, as well as all her attorney fees and expenses incurred by this appeal. We remand to the circuit court for a hearing on the costs of Jacqueline's attorney fees and to enter a judgment for the amount of her attorney fees as sanctions awarded to Jacqueline.

¶ 52 IV. Petition for Rehearing

¶ 53 Essam brings several matters to the court's attention on petition for rehearing. First, in this modified order we correct an error, brought to our attention by Essam, and clarify that the condominium on Lake Shore Drive was purchased prior to the marriage, instead of after the marriage. However, this has no bearing on our analysis or on the outcome of this appeal, as the parties agreed in their settlement that the property would be awarded to Jacqueline, and we find no ground to vacate the marital settlement agreement.

¶ 54 Essam also argues in his supplement to his petition for rehearing that in "thumbing through 11 bankers boxes of this case documents," which we assume is the record on appeal, that he found a quit claim deed transferring the ownership of the condominium to Jacqueline dated February 13, 2013, the day of the trial. Essam argues that the February 13, 2013 prove-up day began with a pretrial conference between the trial court and counsel for the parties, after which the court gave its recommendation, among other things, that the marital property be awarded to Jacqueline. Essam further argues that the marital settlement agreement was "drafted sometime

between 6 pm and 11 pm the same day of February 13, 2013," and was signed on February 14, 2013 "after the Quit Claim Deed was executed," when Essam "was no longer the owner." Essam contends that "according to the MSA terms, the Quit Claim Deed should have been signed after the MSA was signed." Essam argues that "[t]he process by which the Judge's recommendations was implemented is fraudulently op[p]ressive and should void the MSA." Essam did not previously raise this argument in his appellant brief, although both the marital settlement agreement and the copy of the quit claim deed were both part of the record filed on appeal.

¶ 55 This claim was not argued previously by Essam and therefore we will not consider it. Arguments not raised initially in Essam's appellant brief are waived and Essam is barred from raising them in his petition for rehearing. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (argument in an appellant's brief "shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. * * * *Points not argued are waived* and *shall not be raised* in the reply brief, in oral argument, *or on petition for rehe*aring." (Emphasis added)). All other arguments raised in Essam's petition for rehearing that have not already been properly made before this court simply will not be considered, including Jacqueline's purported "act of perjury" regarding a previous transfer of ownership of the condo.

¶ 56 Essam also argues that this court "overlooked the weight of evidence" of his "total mental collapse at the signing and prove-up of the MSA and the documented telephone calls evidence disputing any claim that the MSA was reviewed by him the early morning of February 14, 2013." Essam argues that this court erred in stating that, "at the motion, the husband did not present any objective evidence that he was on any medication at the time the MSA was reached." Essam argues that he was on three medications prescribed by his cardiologist that allegedly have side effects. This does not support Essam's previous argument that he was on "psychostimulant

medication" so affecting his state of mind that the marital settlement agreement was procedurally unconscionable and void. This court clarifies "any *psychostimulant* medication" (emphasis added.) Again, we reiterate that Essam testified clearly and cogently during the prove-up and indicated he entered into the marital settlement agreement voluntarily. We also reiterate that Essam's own testimony was that he not only "met" with his attorney but indeed also reviewed the marital settlement agreement. The remainder of Essam's arguments on petition for rehearing simply repeat arguments he already made before this court in briefing on appeal regarding substantive and procedural unconscionability, which we again find have no merit. We therefore deny Essam's petition for rehearing.

¶ 57 CONCLUSION

¶ 58 Essam has failed to demonstrate clear and convincing evidence of either procedural or substantive unconscionability necessary to vacate the judgment incorporating the marital settlement agreement. Rather, all of Essam's arguments are thoroughly belied by the record. We conclude that Essam's motion to vacate and this appeal were frivolous and not taken in good faith but merely to cause unnecessary delay and hardship to Jacqueline, justifying an award of sanctions pursuant to Ill. S. Ct. R. 375(b) (eff. Feb. 1, 1994), for Jacqueline's attorney fees and expenses for Essam's motion to vacate heard in the circuit court below, as well as all her attorney fees and expenses incurred by this appeal. We remand to the circuit court for a hearing on the amount of Jacqueline's attorney fees and to enter a judgment thereon as sanctions awarded to Jacqueline.

¶ 59 Affirmed; sanctions awarded; remanded.