2015 IL App (2d) 140934-U
No. 2-14-0934
Order filed November 24, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF ANTHONY R. VACLAVICEK, Petitioner-Appellee, and CAROL L. VACLAVICEK, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 12-D-2362 Honorable John W. Demling, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Burke and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decisions regarding the grounds for dissolution and petitioner's dissipation were not against the manifest weight of the evidence. Additionally, the trial court did not abuse its discretion in barring respondent's expert witnesses from testifying. Respondent has forfeited her remaining contentions. We affirm.

¶ 2 Respondent, Carol L. Vaclavicek, appeals from the trial court's judgment for dissolution of her marriage with petitioner, Anthony R. Vaclavicek. Respondent contends that the trial court erred in ruling that grounds existed for the dissolution of her marriage. She also contends that the trial court erred in limiting her dissipation claims and barring her expert witnesses from testifying in support thereof. Respondent proceeds to challenge six of the trial court's underlying

rulings and raise three contentions that her religious rights have been unconstitutionally infringed. We conclude that respondent has forfeited the majority of her contentions, and we find no error in the trial court's rulings. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Petitioner and respondent were married in New York in 1974. They moved to Geneva, Illinois, in 1999. They had two children, both of whom were emancipated by 2002. Petitioner filed for dissolution of marriage on November 9, 2012. The trial court conducted a three-day hearing on whether grounds existed to dissolve the marriage during September and October, 2013.

¶ 5 Petitioner testified that he and respondent began having marital problems around 2002. They attended marriage counseling in 2004. In 2005, respondent accepted a two-year position with her employer in London. She returned to Geneva for major holidays while she was working in London. In 2006, petitioner accepted a short-term position with his employer in the Netherlands. This turned into a full-time position, and petitioner continued residing in the Netherlands through the time of the proceedings. He returned to the United States for holidays, family gatherings, and occasional business trips. Respondent, meanwhile, returned to Geneva, as planned, in 2007. She continued residing in Geneva through the time of the proceedings.

¶ 6 Shortly after moving to the Netherlands, petitioner began a romantic relationship with Marta Hernandez, a Puerto Rican citizen. Petitioner testified that Marta split her time between the Netherlands and Puerto Rico, and the two had maintained their relationship through the time of the proceedings. Respondent admitted that she became aware of petitioner's relationship with Marta in about 2007.

¶ 7 Petitioner first discussed dissolving the marriage in 2008. Respondent refused to acquiesce to dissolution because she was "a follower of Jesus Christ." Respondent explained her belief that divorce was "against God's law." Petitioner and respondent last had sexual relations in 2009. They took a trip to an Illinois state park that same year. Petitioner testified that the trip was taken in an effort to reconcile the marriage; respondent disputed this notion, maintaining that the trip was spontaneously planned after petitioner came home for the weekend of their wedding anniversary.

¶ 8 Petitioner acknowledged that he continued sleeping in the same bed with respondent when he visited the United States for various family gatherings. He explained that he did so to avoid causing a scene in front of the parties' children. Petitioner also continued using his marital residence in Geneva as his official United States residence and mailing address. He deposited $3,000 per month into a joint credit union account as a contribution toward the expenses involved with their Geneva home and their Wisconsin vacation home.

¶ 9 The parties presented closing arguments on grounds on October 24, 2013. Respondent argued that, under Illinois law, the parties had not been living separate and apart for two years, and grounds did not exist to dissolve the marriage on the basis of irreconcilable differences. The trial court disagreed, delivering an oral ruling on October 25, which was incorporated into a written order. The trial court found that irreconcilable differences had caused an irretrievable breakdown of the marriage; past attempts at reconciliation had failed; future attempts at reconciliation would be impracticable and not in the best interests of the family; and the parties had lived separate and apart for a period in excess of two years.

¶ 10 Although respondent had argued during the hearing on grounds that the marriage was not irretrievably broken, she took a contrary position in preparation for the trial on the disposition of

marital property. She filed a notice of dissipation and asserted that the marriage was undergoing an irreconcilable breakdown since 2006, when petitioner began his affair with Marta. She then moved to continue the trial date and requested extra time for discovery. Petitioner countered with a motion seeking to limit respondent's claims of dissipation, arguing that the marriage did not begin undergoing an irreconcilable breakdown until he filed his petition for dissolution in 2012. The trial court heard arguments and issued rulings on March 3, 2014. The trial on the disposition of marital property was continued to May 15, 2014, and the parties were given until May 1 to complete discovery. The trial court found that, based on the evidence presented during the hearing on grounds, the irreconcilable breakdown of the parties' marriage began no earlier than January 2010. Accordingly, the trial court ruled that respondent was entitled to discovery dating back to January 1, 2010.

¶ 11 Thereafter, respondent filed a supplemental notice of dissipation with an attached spreadsheet purporting to show that petitioner had dissipated at least $275,518. Respondent also notified petitioner of her intent to call two expert witnesses in the field of forensic accounting. Petitioner filed motions seeking to bar the supplemental notice of dissipation and the expert testimony, arguing that he had inadequate time to prepare for and defend against the allegations of dissipation. Petitioner also noted that respondent had previously denied the existence of any opinion witnesses in her responses to interrogatories and requests to produce. After concluding that the depositions could not be completed with sufficient time to prepare for the May trial date, the trial court granted petitioner's motion to bar the expert testimony. However, the trial court allowed respondent to proceed on her supplemental notice of dissipation, commenting that she was capable of providing her own testimony regarding petitioner's alleged dissipation.[1]

[1] Respondent was a certified public accountant at the time of the proceedings.

¶ 12 The trial on the disposition of marital property commenced as scheduled on May 15, 2014. Respondent rested her case on June 13, following the fourth day of evidence and testimony. Petitioner moved for a directed finding that respondent had failed to establish a *prima facie* case of dissipation. The trial court directed the parties to brief their positions regarding the elements of dissipation and the time frame of petitioner's alleged dissipation. The trial court later ruled that the irreconcilable breakdown of the parties' marriage did not begin to occur until petitioner filed for dissolution on November 9, 2012. In so ruling, the trial court commented that the parties had acquiesced to the unique circumstances of their marriage until that point. The trial court also ruled, however, that respondent had established a *prima facie* case of dissipation regarding certain transactions occurring after November 9, 2012.

¶ 13 On June 27, 2014, the final day of the trial on the disposition of marital property, respondent filed a motion to reconsider the trial court's March 3 ruling that any claim for dissipation be limited in time from January 1, 2010, to present. The motion also requested reconsideration of the trial court's ruling that the irreconcilable breakdown of the marriage did not begin until November 9, 2012. For the first time in the proceedings, respondent raised a constitutional argument based on religious grounds. She argued that, by shortening the dissipation period, the trial court had improperly punished her for adhering to her religious convictions and maintaining that her marriage was reconcilable. The trial court granted petitioner leave to file a response and asked the parties to prepare written closing arguments.

¶ 14 On July 24, 2014, respondent filed a notice of claim of unconstitutionality pursuant to Illinois Supreme Court Rule 19 (eff. Sept. 1, 2006). Therein, respondent notified the Illinois Attorney General of her intent to challenge the constitutionality of sections 401(a)(2) and 503(d) of the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) (750 ILCS 5/101 *et*

seq. (West 2012)). She attached copies of her motion to reconsider the trial court's rulings and her written closing argument. In her closing argument, respondent asserted that "irreconcilable differences" was not a ground for divorce when the parties were married in New York. Thus, respondent argued, the trial court unconstitutionally impaired her "marriage contract" by finding that grounds existed to grant dissolution. Respondent also reiterated her position that she was unconstitutionally punished for adhering to her religious convictions when the trial court shortened the dissipation period. Respondent added an assertion that the trial court's ruling on the dissipation period violated the Illinois Religious Freedom Restoration Act (775 ILCS 35/15 (West 2012)), because it substantially burdened her free exercise of religion without furthering a compelling government interest. The record contains no indication of whether the Office of the Attorney General responded to the notice of respondent's constitutional claims or advised the parties that it declined to intervene.

¶ 15 The trial court delivered its rulings on August 14, 2014. After denying respondent's motion to reconsider, the trial court read from its written judgment disposing of the marital property. The parties' retirement accounts, bank accounts, and stocks were divided evenly, while their real property was to be sold and divided with respondent receiving 55 percent. The trial court further concluded that petitioner had dissipated $35,835 from the marital estate. Neither party was awarded contribution for attorney fees, as the trial court found that both parties had significant assets and were capable of paying their own fees. In closing, the trial court noted that respondent's constitutional claims had not been raised until the conclusion of the proceedings and rejected the arguments without elaborating. The trial court's written judgment for dissolution of marriage was entered on August 28, 2014. Respondent filed a timely notice of appeal.

¶ 16 II. ANALYSIS

¶ 17 As noted, respondent sets forth 12 contentions in her brief. Prior to reaching the merits, petitioner argues that respondent's brief violates Supreme Court Rule 341(h)(7), because her contentions lack citations to the record and supporting authority. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); see also *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1019 (2011) ("Arguments that do not comply with Rule 341(h)(7) do not merit consideration on appeal and may be rejected by this court for that reason alone."). We have reviewed the briefs, and we agree with petitioner that many of respondent's contentions are merely supported by conclusory assertions, and are thus forfeited on appeal. See *Hendry*, 409 Ill. App. 3d at 1019. We will address respondent's contentions in the order that they are presented, noting the forfeited contentions when appropriate.

¶ 18 Respondent first contends that the trial court erred in ruling that grounds existed for the dissolution of her marriage. Under the Marriage Act, grounds for the dissolution of a marriage exist where: (1) the spouses have lived separate and apart for a continuous period in excess of two years; (2) irreconcilable differences have caused the irretrievable breakdown of the marriage; and (3) efforts at reconciliation have failed or future attempts at reconciliation would be impracticable and not in the best interests of the family. 750 ILCS 5/401(a)(2) (West 2012). "The determination of the issue of grounds for the dissolution of a marriage is a matter for the trial court, and the trial court's finding will not be disturbed unless it is against the manifest weight of the evidence." *In re Marriage of Kirkpatrick*, 329 Ill. App. 3d 202, 212 (2002). A ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary, or not based on any evidence or only if the opposite conclusion is clearly evident from the evidence in the record. *In re Estate of Savio*, 388 Ill. App. 3d 242, 247 (2009).

¶ 19 Respondent argues that it was against the manifest weight of the evidence for the trial court to find that the parties lived separate and apart for a continuous period of two years. In support, respondent relies primarily on *In re Marriage of Kenik*, 181 Ill. App. 3d 266 (1989), and *In re Marriage of Dowd*, 214 Ill. App. 3d 156 (1991). In *Kenik*, the spouses had continued living together, but used separate bedrooms, stopped having sexual relations, and had no "meaningful communication" with each other. *Kenik*, 181 Ill. App. 3d at 273. The spouses in *Dowd* also continued living together even though they slept separately and stopped having sexual relations. Although the spouses in *Dowd* continued taking meals together, this was only to maintain an appearance of harmony for their child. *Dowd*, 214 Ill. App. 3d at 159. The reviewing courts in both of those cases upheld findings that the spouses lived "separate and apart" even though they had continued residing in the same residence. *Kenik*, 181 Ill. App. 3d at 272-74; *Dowd*, 214 Ill. App. 3d at 159.

¶ 20 Without further discussion, respondent simply asserts that the facts in this case are "contrary" to those considered in *Kenik* and *Dowd*. We acknowledge, as did the trial court, that the facts in this case are unlike those considered in *Kenik* and *Dowd* in certain respects; namely, the parties in this case slept in the same bed and shared meals when petitioner traveled to the United States. However, the trial court stressed that there only were a limited number of these occurrences and it had been more than two years since the parties last had sexual relations. The trial court concluded that "all of the facts" in this case supported a finding that the parties had been living separate and apart. We agree.

¶ 21 Respondent's next contention is that the trial court erred in ruling that the irreconcilable breakdown of her marriage did not begin until petitioner filed for dissolution on November 9, 2012, thereby limiting the timeframe for her claims of petitioner's alleged dissipation. Although

she maintained during the hearing on grounds that her marriage *was not* irreconcilable, respondent conceded for the purposes of dissipation that her marriage *was* irreconcilable because petitioner no longer wished to be married. See *In re Marriage of Smoller*, 218 Ill. App. 3d 340, 345 (1991) (holding that, where one spouse clearly desires to end the marriage, an irreconcilable difference necessarily arises between the spouses, causing an irretrievable breakdown of the marriage). Respondent argues here that the irreconcilable breakdown of her marriage began when petitioner started dating Marta, and therefore asserts that she should have been permitted to show dissipation dating back to 2006.

¶ 22 Dissipation is one of the statutory factors of the Marriage Act that the trial court should consider in the equitable division of marital property. See 750 ILCS 5/503(d)(2) (West 2012). As used in the Marriage Act, "dissipation" means the "use of marital property for the sole benefit of one of the spouses for a purpose unrelated to the marriage at a time that the marriage is undergoing an irreconcilable breakdown." *In re Marriage of O'Neill*, 138 Ill. 2d 487, 496 (1990). Dissipation should be calculated from the time that the parties' marriage began undergoing an irreconcilable breakdown. *In re Marriage of Holthaus*, 387 Ill. App. 3d 367, 374-75 (2008). However, not every incident or conflict that occurs during a marriage signals the beginning of an irreconcilable breakdown. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 91. "Because courts cannot be charged with parsing the record to determine what action or argument started the exact date the breakdown begins, the point a marriage is undergoing an irreconcilable breakdown is the date a breakdown is inevitable." *McBride v. McBride*, 2013 IL App (1st) 112255, ¶ 46. "The issue of dissipation is generally a question of fact, and the trial court's finding concerning dissipation will not be disturbed unless it is against

the manifest weight of the evidence or an abuse of discretion." *In re Marriage of Carter*, 317 Ill. App. 3d 546, 551 (2000).

¶ 23 Here, the trial court found that the issues respondent presented in objecting to the grounds for dissolution were the same issues that indicated a possibility of reconciliation between the parties until the date that petitioner filed for dissolution. The trial court noted respondent's acquiescence to petitioner's relationship with Marta, commenting, "for whatever reasons, the parties seemed to accept and get along with the lifestyle that each was living." While we agree with respondent that conflicts seemingly existed between the parties before petitioner filed for dissolution, the trial court's ruling was not against the manifest weight of the evidence.

¶ 24 During the hearing on grounds, petitioner testified that he last had sexual relations with respondent in 2009, the same year that he and respondent took a trip to an Illinois state park for purposes of reconciliation. Respondent, however, disagreed that the trip was taken for purposes of reconciliation, maintaining that the couple spontaneously decided to take the trip after petitioner came home for their anniversary weekend. She further explained that petitioner continued to return home for holidays and family gatherings through 2012. Respondent testified that petitioner would help her with the preparation and clean up of meals. Petitioner occasionally gave respondent small gifts. Respondent introduced exhibits showing cards from petitioner and family photographs with petitioner, as well as numerous emails between the parties. She testified that petitioner held her hand while they walked together during Labor Day weekend, 2012. This evidence supports the trial court's findings that the parties accepted the circumstances of their marriage, and the irreconcilable breakdown of their marriage did not become inevitable until petitioner filed for dissolution. See *McBride*, 2013 IL App (1st) 112255, ¶ 46.

¶ 25 Respondent's third contention is that the trial court abused its discretion in barring her expert witnesses from testifying regarding petitioner's alleged dissipation. As noted, respondent filed a supplemental notice of dissipation with an attached spreadsheet purporting to show that petitioner had dissipated at least $275,518. Also attached was the joint opinion of two experts in the field of forensic accounting. However, the trial court barred the experts from testifying after concluding that there was insufficient time to conduct their depositions before the trial on the disposition of property.

¶ 26 Illinois Supreme Court Rule 219(c) authorizes the trial court to prescribe sanctions when a party fails to comply with orders regarding discovery, including barring witnesses from testifying. Ill. S. Ct. R. 219(c) (eff. July 1, 2003). "The trial court has discretion to impose a particular sanction, and its decision will not be reversed absent a clear abuse of discretion." *In re Marriage of Booher*, 313 Ill. App. 3d 356, 359 (2000). An abuse of discretion occurs when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *In re Marriage of Callahan*, 2013 IL App (1st) 113751, ¶ 27. When examining the trial court's decision to impose sanctions, a reviewing court must consider several factors, such as surprise to the opposing party, the prejudicial effect of the witness's testimony, the nature of the testimony, the diligence of the adverse party, the timeliness of the objection, and the good faith of the party offering the testimony. *Klingelhoets v. Charlton-Perrin*, 2013 IL App (1st) 112412, ¶ 38. No one factor is determinative, and each case presents a unique factual situation that must be considered independently. *Id.*

¶ 27 Here, respondent's expert witnesses were disclosed for the first time on April 7, 2014, when she filed her supplemental notice of dissipation. Petitioner filed a motion to bar the experts from testifying pursuant to Rule 219(c). At the hearing on petitioner's motion, respondent

acknowledged that the experts were unavailable for depositions until the week of the trial. The trial court noted that respondent had been given ample time to recognize the need for an expert witness and procure such services, as the petition for dissolution was filed on November 9, 2012. However, respondent had repeatedly denied the existence of any opinion witnesses in her responses to interrogatories and requests to produce. The trial court noted that, under the Code of Civil Procedure (the Code), respondent was required to disclose the identity of an expert witness with sufficient time to allow for petitioner's trial preparation. See 735 ILCS 5/2-1003(c) (West 2012). On that basis, the trial court granted petitioner's motion to bar respondent's experts. In so ruling, the trial court inferred that respondent's background as a certified public accountant with a master's degree in finance qualified her to adequately testify regarding the information in the spreadsheet without the need for expert witnesses.

¶ 28 Respondent subsequently filed a motion to continue the trial, arguing that additional time was necessary to complete discovery. Therein, respondent asked that her expert witnesses be permitted to testify if her motion was granted. She asserted that her experts had been improperly barred pursuant to Supreme Court Rule 218(c). See Ill. S. Ct. R. 218(c) (eff. Oct. 2, 2002) (providing that the disclosure of witnesses and completion of discovery "shall be chosen to ensure that discovery will be completed not later than 60 days before the date on which the trial court reasonably anticipates that trial will commence, unless otherwise agreed by the parties"). During the hearing on respondent's motion, the trial court explained to respondent that its ruling was not related to Rule 218(c); rather, the expert witnesses were barred pursuant to section 2-1003(c) of the Code, because they were not disclosed within a reasonable time to conduct depositions before the trial on the disposition of property.

¶ 29 On appeal, respondent again asserts that the trial court's ruling constituted an erroneous application of the 60-day requirement set forth in Rule 218(c). At worst, this is a disingenuous attempt to mischaracterize the trial court's ruling. At best, it is an error of oversight. Regardless, respondent has presented no case law in support of her position and she has failed to address section 2-1003(c) of the Code. After reviewing the factors set forth in *Charlton-Perrin* (2013 IL App (1st) 112412 at ¶ 38), we find no abuse of discretion in the trial court's ruling.

¶ 30 Respondent next contends that the trial court erred by: (1) barring her second amended notice of dissipation; (2) denying one of her several motions for a continuance; (3) denying her the opportunity to present a rebuttal argument to respondent's written closing argument; (4) denying her request for attorney fees related to a rule to show cause; (5) denying her request for attorney fees related to time spent proving dissipation; and (6) ruling that certain expenditures made by respondent did not constitute dissipation. These contentions each consist of between one and three paragraphs in respondent's brief. In some instances, respondent simply complains that the trial court's rulings were unfair and fails to present any supporting case law. In other instances, respondent cites two or three cases for general propositions, but fails to adequately develop an argument. These contentions do not merit this court's consideration and are therefore forfeited. See *Hendry*, 409 Ill. App. 3d at 1019; see also Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013).

¶ 31 Finally, respondent raises three constitutionally based contentions which mirror the positions set forth in her written closing argument. She first contends that the trial court's ruling violated her fundamental right to marriage, arguing, "[i]f marriage is a fundamental right, and it most certainly is, then remaining married is also a fundamental right." Respondent next contends that the trial court unconstitutionally limited the time frame for her dissipation claims

because of her religious belief that her marriage was not irreconcilably broken. Respondent's third constitutionally based contention is more accurately categorized as an argument that her religious rights are secured by the Illinois Religious Freedom Act. See 775 ILCS 35/15 (West 2012).

¶ 32 The trial court declined to address respondent's claims of unconstitutionality, commenting that they had not been raised until the end of the proceedings. We similarly decline to address the merits of respondent's constitutionally based contentions on appeal, as we conclude that they have been forfeited.

¶ 33 Illinois Supreme Court Rule 19 provides that, where the State is not already a party, the Illinois Attorney General must be notified of any cause or proceeding in which the constitutionality of a statute is raised. Ill. S. Ct. R. 19(a) (eff. Sept. 1, 2006). The rule also provides that the notice of a claim of unconstitutionality "shall be served at the time of suit, answer or counterclaim, if the challenge is raised at that level, or promptly after the constitutional or preemption question arises as a result of a circuit or reviewing court ruling or judgment." Ill. S. Ct. R. 19(b) (eff. Sept. 1, 2006). While a party's failure to comply with Rule 19 does not deprive a reviewing court of jurisdiction to consider constitutional claims, the failure to strictly comply with the rule may result in waiver or forfeiture. *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106, 118-19 (2004); see also *Doe v. Weinzweig*, 2015 IL App (1st) 133424, ¶ 36.

¶ 34 Respondent made her religious convictions a focal point of these proceedings from the outset. She disputed the notion that her marriage was irreconcilable during the hearing on grounds, testifying, "God's law is higher than Illinois law." Thus, the question of whether the "irreconcilable differences" ground for dissolution violated respondent's fundamental right to

remain married arose no later than October 25, 2013, when the trial court ruled that grounds existed to grant the dissolution petition.

¶ 35 After the trial court ruled in petitioner's favor on grounds, respondent changed course and took the position for purposes of dissipation that the marriage was undergoing an irreconcilable breakdown since petitioner began dating Marta in 2006. Petitioner countered with a motion seeking to limit the timeframe for respondent's allegations of his alleged dissipation to the date that he filed for dissolution. Therefore, the question of whether respondent's dissipation claims would be unconstitutionally limited because she adhered to her religious convictions was readily apparent. This issue certainly arose no later than March 3, 2014, when the trial court ruled that respondent was entitled to discovery dating back only to January 1, 2010.

¶ 36 However, respondent failed to notify the Illinois Attorney General of her intent to challenge sections 401(a)(2) and 503(d) of the Marriage Act until July 24, 2014. By this time, approximately eight months had passed since the trial court's ruling on grounds, and nearly five months had passed since the trial court limited the timeframe for respondent's dissipation claims. Furthermore, the parties had already completed their presentations of evidence for the trial on the disposition of marital property; the trial court was simply awaiting the submission of written closing arguments in advance of its August 14, 2014, ruling.

¶ 37 We note in closing that, as with the majority of respondent's contentions, her constitutional arguments have not been fully developed. "A reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research." *In re Marriage of Auriemma*, 271 Ill. App. 3d 68, 72 (1994) (quoting *Thrall Car Manufacturing Co. v. Lindquist*, 145 Ill. App. 3d 712, 719 (1986)); see also *People v.*

Chatman, 357 Ill. App. 3d 695, 703 (2005) (stating the same, and noting that an appellant's failure to present proper arguments can amount to waiver or forfeiture of those claims on appeal). For all of these reasons, we conclude that respondent has forfeited her constitutional issues, and we decline to address the merits of her arguments.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgments of the circuit court of Du Page County.

¶ 40 Affirmed.