2016 IL App (1st) 150607-U

FOURTH DIVISION
March 10, 2016

No. 1-15-0607



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| *In re* MARRIAGE OF ELISABETH SCHAFFRATH, | ) | Appeal from the |
| | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Cook County |
| | ) | |
| and | ) | No. 13 D 00999 |
| | ) | |
| STEVEN SCHAFFRATH, | ) | |
| | ) | Honorable |
| | ) | Elizabeth Loredo Rivera |
| Respondent-Appellant. | ) | Judge Presiding. |

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JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice McBride and Justice Cobbs concurred in the judgment.

**ORDER**

¶ 1 *Held*: Circuit court's decision denying respondent's motion to vacate judgment of dissolution and rescind portion of marital settlement agreement affirmed. Respondent failed to meet his burden of showing by clear and convincing evidence that parties made mutual mistake of fact as to value of marital residence or that he exercised due care prior to signing agreement.

¶ 2 The issue in this case is whether the parties' marital settlement agreement, or a portion of it, should be rescinded and the judgment of dissolution of marriage vacated in part. Respondent, Steven Schaffrath (Steven), and petitioner, Elisabeth Schaffrath (Elisabeth), entered into a marital settlement agreement, which stated that their marital residence had "no equity" because

the debt serving the property exceeded the current market value. Elisabeth was awarded the property. Steven, claiming that he later discovered that the property was worth more, filed a motion to vacate the judgment of dissolution based on mutual mistake. After holding an evidentiary hearing, the trial court denied Steven's motion. He appealed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married in 1994. In 2013, Elisabeth filed a petition for dissolution of marriage against Steven. On September 9, 2014, the trial court entered a judgment for dissolution of marriage. The judgment incorporated the parties' marital settlement agreement (the MSA).

¶ 5 The MSA stated, in pertinent part, that the parties' marital residence (the property), which was awarded to Elisabeth, had "no equity" because the debt serving the property exceeded the current market value. The agreement further provided that Steven would convey his right in the property to Elisabeth by quitclaim deed, and she would refinance the property to release Steven's name from the mortgage.

¶ 6 On October 9, 2014, pursuant to section 2-1203 of the Code of Civil Procedure (735 ILCS 5/2-1203)(West 2012)), Steven filed a motion to vacate the judgment and rescind the MSA, or at least the portion that awarded Elisabeth the property, based on mutual mistake. Steven argued that both parties had mistakenly believed that the amount due on the mortgage exceeded the value of the property. He alternatively argued that Elisabeth knew the loan amount was significantly less than the market value of the property and intentionally misled Steven and the court into believing otherwise.

¶ 7 In his motion, Steven stated that the parties had executed two loan modification agreements previously. The first loan modification was in 2010, in which the principal balance of the loan on the property was approximately $521,000. The second loan modification agreement

(the more significant one for our purposes) was in 2013. In his motion, Steven stated that in 2013, Elisabeth executed the loan modification agreement to change the interest rate. His petition further alleged that the current lender for the property had "forgiven approximately $300,000.00 from the previous loan amount of $450,000.00," such that "the amount necessary to pay off the existing loan is $168,000.00." (The payoff letter attached to Steven's motion explained that the $168,000 consisted of a loan balance of just under $152,000 plus interest, escrow advance, and other expenses.)

¶ 8 Steven argued that the current value of the property "as provided by the Cook County Assessor's office is $285,080," and that he believed the property was worth even more. Thus, he argued, it was incorrect to say that the house had no equity, given that its current market value (as Steven viewed it) was over a hundred thousand dollars more than the current loan balance.

¶ 9 In her written response, Elisabeth denied most of Steven's allegations. She admitted that, on April 1, 2013, she and Steven executed a loan modification agreement. But she did not admit that both she and Steven thought that the 2013 loan modification simply changed the interest rate. To the contrary, she stated that "the interest rate for the loan was reduced as well as the principal balance of the loan such that the property's loan would not exceed the value of the property. In fact, the loan was reduced to an amount that was equal to the approximate Fair Market Value of the property. The property would therefore have no value as opposed to a negative value." Elisabeth also attached a copy of the loan modification documents to her response, which showed that both she and Steven had signed that 2013 loan modification, and that it indicated a new outstanding loan balance of $152,000.

¶ 10 Elisabeth admitted that the current payoff of the existing loan on the property was approximately $168,000, but she denied Steven's allegation regarding the current value of the

property and contended that "the Cook County Assessor's Office website is not a certified appraisal of the Fair Market Value of a property." She further argued that Steven had not provided any admissible evidence to prove his allegation that the property's fair market value exceeded the loan on the date the judgment for dissolution of marriage was entered. The record does not contain any reply from Steven.

¶ 11 The record contains a copy of the circuit court's order, dated January 9, 2015, taking the motion under advisement. The order states that the court "heard testimony" from the parties, who were represented by counsel, and "received exhibits." The court's order also states that the court heard argument and, in his brief on appeal, Steven also notes that his motion was "briefed and argued." But the record does not contain a transcript of any evidentiary hearing.

¶ 12 On January 30, 2015, the circuit court entered a three-page written order denying Steven's motion to vacate the judgment and rescind the marital agreement. The order contained three separate findings, which we summarize as follows: (1) no mutual mistake of fact occurred; (2) Steven failed to prove the current market value of the property or that there was equity in the property at all; and (3) Steven failed to establish that he exercised the requisite due care that would entitle him to rescission.

¶ 13 After he filed this appeal, but before he filed his brief, Steven filed a motion in this court for an extension of time to file a bystander's report. We denied the motion but did so "without prejudice" to Steven's "right to renew his motion at such time as he is prepared to tender this proposed supplement to the record properly certified." Steven did not renew his motion. Thus, we have before us neither a transcript of the evidentiary hearing nor a bystander's report.

¶ 14 Elisabeth did not file a response brief in this appeal. On the court's own motion, we took this case for consideration on Steven's brief only. We may reach the merits of an appeal without

an appellee's brief where the record is simple. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 15 II. ANALYSIS

¶ 16 In the trial court, Steven abandoned his claim that Elisabeth intentionally misled the court and him into believing that the loan balance on the property exceeded its fair market value and claimed only that there had been a "mutual mistake." Thus, the only argument before the circuit court was whether it should vacate the judgment of dissolution of marriage and rescind the marital settlement agreement based on mutual mistake. We first address the applicable standards of review and legal principles that govern our review of this matter.

¶ 17 Section 2-1203 of the Code of Civil Procedure provides that, in non-jury cases, "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 (West 2012). The purpose of a section 2-1203 motion is to bring to the court's attention newly discovered evidence, changes in the law, or errors in the court's previous application of existing law. *Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009); see also *In re Marriage of King*, 336 Ill. App. 3d 83, 87 (2002) *aff'd*, 208 Ill. 2d 332 (2003) (purpose of section 2-1203 motion to vacate is to alert trial court to errors it made and afford opportunity for correction). A circuit court may vacate a final judgment pursuant to section 2-1203 on reasonable terms and conditions. *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 517 (1992). The party seeking to vacate a judgment bears the burden of establishing that sufficient grounds exist for doing so. *Id.*

¶ 18 Generally, the decision to vacate a judgment is a matter within the sound discretion of the trial court. *In re Marriage of Agustsson*, 223 Ill. App. 3d at 517. In the instant case, however, the circuit court ruled on Steven's motion after conducting an evidentiary hearing. Steven, citing *Chicago Investment Corp. v. Dolins*, 107 Ill. 2d 120, 124 (1985) acknowledges that where, as here, a trial court hears witness testimony and resolves conflicts of fact, we review the trial court's findings under the manifest weight of the evidence standard of review. This standard has been applied in cases involving a section 2-1401 petition for relief from judgment of dissolution of marriage where the trial court conducted an evidentiary hearing. See *In re Marriage of Roepenack*, 2012 IL App (3d) 110198, ¶ 35. A circuit court's decision is against the manifest weight of the evidence when the opposite conclusion is clearly apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 155 (2005); *In re Marriage of Roepenack*, 2012 IL App (3d) 110198, ¶ 35.

¶ 19 In denying Steven's motion to vacate, the trial court’s written order made several distinct findings: (1) no mutual mistake of fact occurred; (2) Steven failed to prove that there was equity in the property because he submitted no reliable proof of the property's current market value; and (3) Steven failed to establish that he exercised the requisite due care that would entitle him to rescission. All three findings were made after an evidentiary hearing, but we have no transcript or bystander’s report of that hearing.

¶ 20 “An appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In *Foutch*, a party appealed from an order denying a motion to vacate a judgment. The trial court in *Foutch* had held a

hearing at which both parties were represented by counsel. *Id*. at 391. But the trial court's order denying the motion to vacate did not state specific grounds for the denial. *Id*. The party appealing failed to provide the reviewing court with a transcript of proceedings or bystander's report of the hearing, during which it appeared evidence was presented. *Id*. at 391-92. The court in *Foutch* ultimately held that, because there was no transcript of the hearing on the motion to vacate, there was no basis for holding that the trial court abused its discretion in denying the motion to vacate. *Id*. at 392.

¶ 21 On the other hand, the failure of an appellant to include a transcript of proceedings is not fatal if the record contains sufficient documents to allow meaningful review of the merits of the appeal. *Marzouki v. Najar-Marzouki*, 2014 IL App (1st) 132841, ¶ 20; see also *Whitmer v. Munson*, 335 Ill. App. 3d 501, 511-12 (2002) (and cases cited therein). And in this matter, unlike in *Foutch*, we have a written order containing the trial court's reasoning. Ultimately, whether a record on appeal is sufficient to allow us to address an appellant's claim of error turns on the particular error claimed. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 15. Thus, if the record provides us a sufficient basis on which to review the merits of an issue, we will; to the extent it does not, we will resolve doubt in favor of the trial court's judgment.

¶ 22 With this in mind, we will review defendant's assigned errors. We may affirm on any basis appearing in the record. *Gadson v. Among Friends Adult Day Care, Inc.*, 2015 IL App (1st) 141967, ¶ 15.

¶ 23 We begin with the trial court's finding that there was no mutual mistake of fact. A mutual mistake of fact is a mistake by both parties to an agreement on a basic assumption that is material to the agreement, and which mistake thus renders the agreement voidable by the injured party. *In re M.M.D.*, 213 Ill. 2d 105, 116 (2004); *Jordan v. Knafel*, 378 Ill. App. 3d 219, 234 (2007); see

also *In re Marriage of Johnson*, 237 Ill. App. 3d 381, 391 (1992) ("A mutual mistake which may be established by parol evidence is a mistake common to both contracting parties wherein each labors under the same misconception; thus, when there is a mutual mistake, the parties are in actual agreement but the agreement in its written form does not express the parties' real intent."). Simply stated, a mutual mistake occurs when an actual good-faith agreement is reached, but, as a result of an error, the contract is written in terms that violate the understanding of both parties. *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 518 (1992). A party seeking to invalidate a contract because of mutual mistake must show by clear and convincing evidence that a mistake has been made by both parties. *Schivarelli v. Chicago Transit Authority*, 355 Ill. App. 3d 93, 100 (2005); *Village of Oak Park v. Schwerdtner*, 288 Ill. App. 3d 716, 718 (1997).

¶ 24 A good example of a mutual mistake of fact is a case cited by Steven, *In re Marriage of Agustsson*, 223 Ill. App. 3d 510. The marital settlement agreement there distributed the husband's lump-sum pension equally to each spouse but was silent on the tax consequences. *Id*. at 512. The husband's employer then filed a motion with the court, stating that it was required under federal law to write a single check to the husband and asking that it be allowed to do so. *Id*. The trial court amended its order so that the employer could do so. *Id*. at 512-13. The husband later filed a motion to vacate the marital settlement agreement in part, arguing that, because he received a check for the entire pension payment, he would be hit with all of the tax consequences, when in fact the point of the fifty-fifty split was that each side would bear equal tax consequences. *Id*. at 513.

¶ 25 The trial court held an evidentiary hearing, at which the husband claimed that he assumed each side would bear an equal tax burden. The wife testified that she assumed that the husband would bear the entire tax burden himself. The trial court made a finding of fact that it "did not

believe [the wife's position] for one minute" and that the parties clearly intended an equal split of the pension proceeds *and* the resulting tax consequences. *Id*. at 517. The trial court thus granted the husband's motion to vacate, finding a mutual mistake of fact in that the marital settlement agreement did not reflect the parties' understanding at the time of execution. *Id*. at 518. This court affirmed, finding that the trial court properly found a mutual "mistake concerning taxation of the pension and that it relate[d] to a material feature of the contract." *Id*. at 519.

¶ 26 The difference in this case, however, is that the trial court made a factual finding that no mutual mistake occurred. After the evidentiary hearing, the trial court wrote in part as follows:

> "[A] mutual mistake occurs 'when an actual good-faith agreement is reached, but, due to error, the contract is written in terms that violate the understanding of both parties.' [Citation.] That is not what happened here. The MSA in the instant case, as written, precisely reflects the understanding of both parties."

¶ 27 Steven disputes that finding only by arguing that "a mutual mistake of fact occurred as Elizabeth knew the loan on the property [had] been reduced to approximately $168,000." We reject that argument for several reasons. First, that one-sentence argument does not establish a mutual mistake of fact. If Steven is somehow suggesting that Elisabeth had superior knowledge to Steven and hid that knowledge from him, he might have a claim of fraud or even unilateral mistake, but he would not have a claim for *mutual* mistake—that the parties had the *same* understanding of a particular fact, but the contract somehow failed to reflect that mutual understanding. See *Agustsson*, 223 Ill. App. 3d at 518. And the trial court specifically found that Steven abandoned his claim that Elisabeth "intentionally misled" him into believing there was no equity in the house and "did not present any evidence whatsoever that even remotely suggested" that Elisabeth had somehow deceived Steven.

¶ 28 Moreover, while we do not know how any of the witnesses testified at the evidentiary hearing, the minimal record before us supports the trial court's factual finding. The record discloses that both parties signed the 2013 loan modification that, on its face, vastly reduced the principal balance on the loan. This was not information that only Elisabeth possessed. Nor does the fact of the principal balance reduction somehow prove, by itself, that Elisabeth "knew" that this principal reduction created equity in the property. Though we do not know how Elisabeth testified at the evidentiary hearing, we do know that in her written response, she specifically said that the principal reduction was intended to lower the loan amount to roughly *approximate* the fair market value of the property. It was intended, in other words, to create a situation where the property went from having *negative* equity to *no* equity.

¶ 29 The more crucial point is that the trial court found, after hearing all of the evidence, as a matter of fact, that no mutual mistake occurred here. Without a transcript of proceedings, and where the minimal record before us clearly supports the trial court's reasoning, we are in no position to find that factual finding to be against the manifest weight of the evidence.

¶ 30 In further support of its ruling that no mutual mistake occurred, the trial court made a factual finding that Steven had failed to submit clear and convincing proof that the market value of the property was higher than the loan balance. The trial court wrote:

> "Although the amount of debt securing the residence is uncontested, [Steve] has not come close to showing that there is indeed equity in the home, and if there is, how much there is. While he claims that he has recently discovered that the current market value of the residence exceeds the debt securing the residence, he has absolutely no reliable proof of this. He submitted a computer print-out from the Cook County Assessor's Office, which lists only two different 'estimated

> values' of the residence; he has no reliable proof of the current market value of the real estate. As such, he has submitted no proof that would enable the court to determine whether the 'mistake' he alleges is of such consequence that enforcement would be unconscionable."

¶ 31 Steven attacks this finding, claiming that the computer print-out from the Cook County Assessor's Office listed two different estimated values, while Elisabeth produced no proof of market value. He also argues that this computer print-out was admissible under an exception to the hearsay rule under the Illinois Rules of Evidence.

¶ 32 Given its discussion of the merit of Steven's proof, it appears that the court did allow the property tax statement into evidence but did not find it to be persuasive proof of the current market value of the property. The absence of a complete record of the proceedings, once again, hinders our review. But we would uphold the trial court's judgment on either ground.

¶ 33 If the passage above was intended to explain why the trial court denied admission of the evidence of the property tax statement (which we doubt), we would review that evidentiary ruling for an abuse of discretion and ask whether the trial court's ruling was arbitrary, fanciful, or unreasonable. *State v. Eagletail*, 2014 IL App (1st) 130252, ¶ 26. We would affirm the trial court's evidentiary ruling, if that is what it was, because regardless of whether the property tax statement could have avoided the hearsay rule, as Steven claims, the trial court obviously did not find that statement relevant or reliable to adequately determine the fair market value of the property. The trial court's determination of relevancy was not so arbitrary or unreasonable that we would overturn it. See *Worsley v. Farmington Pizza Co., Inc.*, 322 Ill. App. 3d 371, 373 (2001) (relevance of evidence confined to sound discretion of trial court).

¶ 34 If, as we suspect, the trial court allowed the property tax statement into evidence but simply did not consider it sufficient to prove, by clear and convincing evidence, the market value of the property, we would review that determination under the manifest-weight-of-the-evidence standard and likewise uphold it. The weight to be given to a party's proof rests with the finder of fact, and we will not overturn it unless the opposite conclusion is clearly apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence. *Corral*, 217 Ill. 2d at 155; *Roepenack*, 2012 IL App (3d) 110198, ¶ 35. Having no record of the hearing before us, and only considering the trial court's written order, we cannot say that the opposite conclusion was clearly evident.

¶ 35 For all of these reasons, we uphold the trial court's finding that Steven failed to prove, by clear and convincing, that the parties' understanding that the property had no equity at the time they executed the MSA was a mutual mistake.

¶ 36 Finally, the trial court found that, regardless of whether there was a mutual mistake, Steven failed to show that "the mistake occurred notwithstanding the exercise of due care." *Agustsson*, 223 Ill. App. 3d at 519. As the court noted, in Paragraph I of the marital settlement agreement, Steven "knowingly waived his right to engage in discovery or to obtain an appraisal despite having been advised of his rights to engage in discovery and other investigative procedures. The court explained that either Steven or Elisabeth "could very easily have had the real estate appraised prior to settlement, but both knowingly failed to do so and preferred to go forward and enter into the [MSA]."

¶ 37 Steven does not argue that he exercised due care before the trial court entered its judgment of dissolution. Instead, without citation to any authority, he argues that rescission is proper because he exercised reasonable diligence "upon the discovery of the mistake." But the

issue is not what he did after realizing his alleged mistake; the issue is what he did before he signed the MSA.

¶ 38 *In re Marriage of Sanborn*, 78 Ill. App. 3d 146 (1979), is instructive. In that case, a judgment for dissolution of marriage was entered in which the parties had stipulated to the value of the marital property, based on an appraisal performed in 1976. The husband later filed a motion to vacate, claiming that "after entry of the judgment, [he had] discovered new evidence revealing that the actual value of the residence in 1978 was substantially higher than the appraisal of $142,000." *Id*. at 148-49. In support of his motion, the husband offered a written appraisal performed in 1978, which indicated that the value of the marital residence was between $225,000 and $250,000. *Id*. The husband argued that the award of the home was unjust, since it gave the wife an asset far in excess of $71,000, and that such award would not have been made had the court been aware of the higher valuation. *Id*. at 149. The trial court denied his motion. *Id*.

¶ 39 On appeal, the husband argued that the portion of the judgment awarding the home to the wife was based on a grossly erroneous valuation, and that the trial court had erred in relying on the 1976 stipulated value of the home and in failing to take judicial notice that its fair market value had increased since 1976. *Id*. at 149. We rejected the argument and affirmed the trial court's denial of the husband's posttrial motion to vacate the judgment. We concluded that the husband was bound by his prior stipulation and noted that he was the one who had submitted the original appraisal value and permitted it to be introduced into evidence unchallenged. *Id*. at 150.

¶ 40 The instant case did not involve a "stipulation," but that is a distinction without a difference. In both *In re Marriage of Sanborn* and the instant case, the parties agreed to a value that one party later claimed was incorrect. And as we explained in *Sanborn*, if the husband "had any doubts concerning the accuracy of the appraisal he supplied, *he had ample opportunity prior*

*to the disposition of the marital residence to ascertain and correct any error in valuation*." (Emphasis added.) *Id*. Thus, the husband's subsequent determination that the home had a greater value than he initially represented did not justify setting aside the stipulated fact. *Id*.

¶ 41 *Sanborn* did not involve a claim of mutual mistake; the husband argued that his "newly discovered evidence" as to the home's enhanced value entitled him to a vacatur of the portion of the judgment awarded to the wife. *Id*. at 150. But the court's reasoning in *Sanborn* mirrors the trial court's reasoning here. Steven had every opportunity to determine the market value of the property before signing the MSA. He failed to do so. Accordingly, we agree with the trial court that, even had Steven established a mutual mistake of fact, Steven cannot show that he exercised due care entitling him to relief.

¶ 42 We affirm the trial court's judgment that Steven failed to sustain his burden of proof to show, by clear and convincing evidence, that the parties made a mutual mistake justifying a vacatur of the MSA. Steven failed to show that the MSA inaccurately reflected the parties' understanding, that a mistake was made at all, or that he exercised due care prior to signing the MSA. We cannot say that the trial court's ruling was arbitrary or so unreasonable that the opposite conclusion was clearly evident.

¶ 43 III. CONCLUSION

¶ 44 Affirmed.