FIFTH DIVISION
September 30, 2016

No. 1-15-1465

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ANTHONY CLARK,	)	Appeal from the Circuit
	)	Court of Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 09 D430300
	)	
TERESA ROUNDTREE	)	
	)	Honorable
	)	Daniel Miranda,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

O R D E R

¶ 1 *Held*: (1) The circuit court did not err in entering a final Judgment for Dissolution of Marriage on February 26, 2015, which incorporated the terms from the parties January 29, 2015 marital settlement agreement. (2) The circuit court did not err in denying Respondent's Motion to Vacate the Judgment for Dissolution of Marriage.

¶ 2 This is an appeal brought under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) involving a dissolution of marriage proceeding. This action does not involve any minor children. The circuit court entered a Judgment for Dissolution of Marriage resolving all issues on February 26, 2015. On March 27, 2015, respondent filed a motion to vacate the

judgment for dissolution of marriage. Respondent's motion was heard and denied on April 17, 2015, and this appeal was timely filed on May 14, 2015. For the reasons that follow, we affirm both the judgment of the circuit court and the court's denial of respondent's motion to vacate.

¶ 3 BACKGROUND

¶ 4 The parties were married on November 16, 1995. No children were born of their marriage. Petitioner filed his petition for dissolution of marriage on July 20, 2009. Initially, respondent failed to file an appearance, and the circuit court entered a default judgment against her on January 26, 2010. Respondent subsequently filed a motion to vacate the default judgment on February 25, 2010, and the parties subsequently agreed to vacate the judgment on March 2, 2010. During the pendency of this case, the circuit court set the date for pretrial conference 11 times and set the date for trial seven times. Respondent failed to appear on the December 16, 2014 trial date. As a result, the circuit court rescheduled and set a final trial date for January 29, 2015. On said date, the parties and counsel for both parties were present in court, and the court held a pretrial conference in chambers with only the parties' attorneys. At the pretrial conference, the attorneys worked out a settlement agreement which we presume was approved by their clients. After the pretrial conference, the circuit court entered, *instanter*, a judgment for dissolution of marriage dissolving the bonds of marriage between the parties and instructed the parties' attorneys to present a written judgment to the court within 28 days conforming to the court's directions. Further, the parties were instructed to cooperate in completing the written judgment.

¶ 5 On February 25, 2015, respondent's counsel received the proposed judgment from petitioner. Thereafter, on February 26, 2015, petitioner's counsel presented to the court the

final written judgment for dissolution of marriage, which the court reviewed and entered. On March 27, 2015, respondent filed her motion to vacate judgment for dissolution of marriage entered on February 26, 2015. Respondent alleged that she did not sign the judgment, did not receive notice of its entry and did not agree to any of the terms set forth therein, but failed to specify which terms she did not agree with. At the time of the entry of dissolution, respondent was present in court and made no objection to the entry of dissolution and the court's pronouncement that the terms of the settlement would be placed in writing. After hearing argument from respondent's counsel on April 17, 2015, the circuit court denied the motion to vacate.

¶ 6 ANALYSIS

¶ 7 On appeal, respondent claims the circuit court erred in entering the judgment for dissolution of marriage because neither party signed the judgment, there was no record of agreement between the parties, neither party was present in court, no testimony was taken from either party and no hearing was conducted on the issues. Respondent also claims the trial court erred in denying her motion to vacate the judgment.

¶ 8 I. Standard of Review

¶ 9 On review, we are presented with two issues and two separate standards of review. The first issue is whether the circuit court erred in entering the judgment for dissolution of marriage. We have held that a judgment should not be disturbed unless it is against the manifest weight of the evidence. *McGowan v. McGowan*, 15 Ill. App. 3d 913, 914 (1973). A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence. *In*

re Marriage of Epting, 2012 IL App 113727, ¶ 23(citing *Bazydlo v. Volant*, 164 Ill.2d 207, 215 (1995)).

¶ 10 However, our standard of review is different for the second issue: whether the circuit court properly denied respondent's motion to vacate. We review the denial of a motion to vacate for an abuse of discretion. *In re Estate of B.R.S.*, 2015 IL App 150038, ¶ 11 (citing *Berg v. Mid–America Industrial, Inc.*, 293 Ill. App. 3d 731, 734 (1997)). "An abuse of discretion occurs when no reasonable person would take the view adopted by the court." *Id.* at ¶ 24. Although the two standards are different, they are both highly deferential standards of review. *Id.*

¶ 11 II. Judgment for Dissolution of Marriage

¶ 12 Respondent argues several points in support of her claim that the circuit court should not have granted the judgment for dissolution of marriage; they are summarized as follows: (1) the circuit court's judgment is against the manifest weight of the evidence where the record lacks evidence of testimony, a prove-up, or a formal hearing; (2) residency had not been found by the court nor had grounds of mental cruelty, or in the alternative, irreconcilable differences had not been proven pursuant to Section 401 of the Illinois Marriage and Dissolution of Marriage Act 750 ILCS 5/401 (West 2015); and (3) there was no meeting of the minds in regard to the terms contained in the final judgment.

¶ 13 Respondent contends that these arguments, taken collectively, demonstrate the circuit court's decision was against the manifest weight of the evidence. We disagree.

¶ 14 Respondent alleges the circuit court reached its decision arbitrarily and capriciously by conducting a closed-door pretrial conference, with only counsel and the trial judge present, rather than by conducting a formal prove-up hearing, contested hearing or allowing the

parties to reach an uncontested agreement. She claims the parties' pretrial discussion was insufficient to provide the court with competent testimonial evidence to support a divorce decree or a division of the marital estate. Contrary to respondent's allegations, our court has recognized that a pretrial conference is a sufficient method for conducting a prove-up. See *In re Marriage of De Frates*, 91 Ill. App. 3d 607, 613 (1980). In *De Frates*, the parties were represented by counsel throughout the proceedings, and we found the prove-up of the settlement agreement "was the culmination of lengthy negations, including three pretrial conferences." *Id*. at 612. To elucidate this point, we stated "[we] believe that to a limited extent the hearing was a hybrid between a settlement agreement prove-up and a pretrial conference and that both parties fully ratified any contribution the court made to the final agreement." *Id.*

¶ 15 Here, the parties conducted extensive discovery throughout the pendency of this case. They eventually met with the trial judge, through counsel, at the final pretrial conference on January 29, 2015. Their attorneys discussed the outstanding issues with the judge, relayed the contents of their discussion to their respective clients and eventually arrived at a settlement. The trial court subsequently entered a judgment incorporating the agreed terms discussed in the pretrial conference. Respondent has failed to cite any statutory authority or case law demonstrating that a record of a prove-up hearing, a contested hearing or an uncontested agreement of the parties are required before a trial court may enter a judgment for dissolution of marriage. See Supreme Court Rule 341(h)(7) (appellant's brief must contain arguments supported by citations to authority); *Hall v. Naper Gold Hospitality LLC*, 2012 IL App 111151, ¶ 13 (“ ‘The appellate court is not a depository into which a party may dump the burden of research.’ “ (quoting *People v. O'Malley*, 356 Ill. App. 3d 1038,

1046 (2005))). Thus in light of the facts, and in absence of contrary authority, we believe that to a limited extent the January 29, 2015, pretrial conference, was a hybrid between a settlement agreement prove-up and a pretrial conference. *De Frates*, 91 Ill. App. 3d at 612.

¶ 16 Respondent also contends there was no meeting of the minds. In support of her contention, she points out that the judgment was not signed by either party. She asserts the judgment does not fully dispose of the marital estate, the record is void of any evidence from which the circuit court could conclude the parties reached a meeting of the minds and that she never agreed to the terms within the judgment for dissolution of marriage.

¶ 17 We have noted that courts favor the compromise and settlement of disputed claims. *Id.* at 613. Settlement agreements are governed by the principles of contract law. *Rose v. Mavrakis*, 343 Ill. App. 3d 1086, 1090 (2003). A marital settlement agreement is a contract. *In re Marriage of Haller*, 2012 IL App 110478, ¶ 26. An oral agreement is binding if there is an offer, an acceptance, and a meeting of the minds as to the terms of the agreement. *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill.App.3d 307, 313 (2009). A "meeting of the minds" between the parties will occur where there has been assent to the same things in the same sense on all essential terms and conditions. *Haller*, 2012 IL App 110478, ¶ 26. The lack of nonessential details, however, will not render a contract unenforceable. *Rose*, 343 Ill. App. 3d at 1091. For a contract to be enforceable, the material terms of the contract must be definite and certain. *K4 Enterprises, Inc.*, 394 Ill. App. 3d at 313. A contract is "sufficiently definite and certain to be enforceable" if the court is able to ascertain from the terms and provisions what the parties agreed to do. (Internal quotation marks omitted.) *Id.* (quoting *Midland Hotel Corp. v. Reuben H. Donnelley Corp.*, 118 Ill. 2d 306, 314 (1987)). Further, where the parties have assented to all the terms of the oral agreement,

"the mere reference to a future written document does not negate the existence of a present contract." *Haller,* 2012 IL App 110478, ¶ 30 (although the trial court directed counsel to draft a written judgment incorporating the terms of the agreement, the settlement agreement did not need to be reduced to writing to make it valid and binding; the purpose of the written judgment was simply to memorialize what had already been done and to finalize the case).

¶ 18 Respondent's only evidence contradicting the circuit court's finding of mutual assent between the parties is her affidavit asserting she did not agree to the judgment's terms and her efforts to draw our attention to what the record lacks. Our Supreme Court "has long held that in order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman,* 195 Ill.2d 426, 432 (2001) (citing *Foutch v.O'Bryant,* 99 Ill. 2d 389, 391–92 (1984)). It is incumbent upon respondent, as the party claiming error, to provide us with a sufficient record in order to review her claim of error. *Foutch,* 99 Ill. 2d at 391–92. In the absence of a sufficient record, we must presume the circuit court's findings conformed to the law and had a sufficient factual basis. *Id.* Any doubts which arise from the absence of a sufficient record will be construed against the appellant. *Id.* Thus, *a*bsent contrary evidence, we presume the circuit court had a sufficient legal and factual basis before entering a judgment for dissolution of marriage.

¶ 19 Next, respondent argues the court never made a finding of residency pursuant to section 401 of the Dissolution of Marriage Act. 750 ILCS 5/401 (West 2015).

¶ 20 In support of her claim, respondent cites *In re Marriage of Epting*, 2012 IL App 113727, however we find her reliance on this case to be misplaced. In *Epting*, the court held that due to the respondent's failure to reply to the petition for dissolution of marriage, which alleged

the parties were residents of Illinois, he was deemed to have admitted to being a resident of the state. *Id.* at ¶27-30. The supreme court held that "[a] purpose of pleading is to develop the issues to be determined. A failure to respond to an adversary pleading may constitute an admission of all the facts well pleaded by the adversary and admissions thus drawn from a failure to plead may be considered as evidence." *Id. at* ¶ 30 (citing *Roth v. Roth*, 45 Ill. 2d 19, 23(1970)). Here respondent's admission of residency did not result from her failure to deny petitioner's residency allegation because respondent admitted to the allegations in her reply to the petition. Further, like in *Epting*, respondent also never disputed that the parties were residents of Illinois for 90 days prior to the filing of the petition for dissolution of marriage *Id.* at ¶ 29. Thus, we find the record sufficient for the trial court to have found the Dissolution of Marriage Act's residency requirement satisfied.

¶ 21 Respondent also alleges that grounds for dissolution of marriage had not been proven pursuant to section 401 of the Dissolution of Marriage Act. 750 ILCS 5/401 (West 2015). She draws our attention to the record's lack of testimony or other evidence supporting petitioner's grounds for dissolution. Again we are guided by the supreme court's analysis in *Foutch*. There, the supreme court stated:

> "The order of the trial court, which denied the motion to vacate the judgment, notes that counsel for the parties were present and that the court 'having heard the evidence, adduced the arguments of counsel and now being fully advised in the premises, finds: (1) That the defendants' motion should not be granted.' It must be presumed that the denial of the motion was in conformity with the law and was properly supported by evidence… unless there is a contrary indication in the order or in the record, it is presumed that the court heard adequate evidence to support the decision that was rendered. (Citation omitted.) Where it is alleged that the evidence presented was actually insufficient to support the court's finding, the burden of preserving said evidence rests with the party who appeals from said order."

Foutch, 99 Ill. 2d 393–94. Here, the trial court noted in its judgment for dissolution of marriage that "the court…having considered all the evidence and now being fully

advised in the premises, [finds that]…[t]he Petitioner has proven the material allegations of his [p]etition for [d]issolution of [m]arriage by substantial, competent and relevant evidence…" No record of the evidence heard during the pretrial conference discussion has been presented here, therefore, it must be assumed that the evidence heard fully supported the trial court's finding that grounds had been proven. *Id.* at 394. The supreme court's holding in *Foutch* applies here.

III. Motion to Vacate

¶ 22 Respondent's final claim alleges the trial court abused its discretion by denying her motion to vacate the judgment pursuant to Section 2–1203 of the Civil Procedure Code. 735 ILCS 5/2-1203 (West 2015). We disagree.

¶ 23 Section 2–1203 of the Code 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 2015). 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). Vacating a judgment is a matter within the sound discretion of the trial court and will not be regarded as an abuse of discretion when doing so promotes substantial justice between the parties. *Espedido v. St. Joseph Hospital*, 172 Ill. App. 3d 460, 466(1988). Further, when a party seeks to vacate or modify a property settlement incorporated in a divorce decree, all presumptions are in favor of the validity of the settlement. *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 214 (1994) (citing *In re Marriage of Riedy*, 130 Ill. App. 3d 311, 313

(1985)). A court should not set aside a settlement agreement merely because one party has second thoughts. *Id.* (citing *In re Marriage of Steichen*, 163 Ill. App. 3d 1074, 1079 (1987)).

¶ 24 Respondent claims "the mandates of due process entitle Respondent to have her full argument heard as it relates to her [m]otion to [v]acate." Respondent has cited no authority supporting this proposition. Further, the record demonstrates her argument was heard by the trial court on April 17, 2015. There, the trial judge weighed respondents arguments against his own recollection of the January 29, 2015, settlement agreement prove-up and a pretrial conference. Again, we must presume that the denial of the motion was in conformity with the law and was properly supported by evidence. *Foutch*, 99 Ill. 2d 393. The court stated that its final order was based upon "the court hearing the limited arguments of counsel." In such a situation, unless there is a contrary indication in the order or in the record, it is presumed that the court heard adequate evidence to support the decision that was rendered. *Id.* at 394. Where it is alleged that the evidence presented was actually insufficient to support the court's finding, the burden of preserving said evidence rests with the party who appeals from said order. *Id.* Respondent has not met her burden, therefore it cannot be said that no reasonable person would take the view adopted by the trial court. *In re Estate of B.R.S.*, 2015 IL App 150038, ¶ 24.

Affirmed