2016 IL App (2d) 150524-U
No. 2-15-0524
Order filed March 10, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF JULIE ANNE HARRIS,	)	Appeal from the Circuit Court
	)	of Kane County.
Petitioner-Appellant,	)	
	)	
and	)	No. 12-D-0084
	)	
JOSHUA B. HARRIS,	)	Honorable
	)	Kathryn D. Karayannis,
Respondent-Appellee.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment for dissolution of marriage, which incorporated the parties' property settlement agreement, was not incomplete; the trial court's findings that the agreement was conscionable and enforceable were not against the manifest weight of the evidence; the trial court did not abuse its discretion in denying petitioner's request to reopen the proofs.

¶ 2 Following an evidentiary hearing in this marriage-dissolution action, the trial court determined that a March 26, 2013, property settlement agreement between petitioner Julie Anne Harris and respondent Joshua B. Harris was conscionable and enforceable. The court entered a judgment for dissolution of marriage that incorporated that agreement. Julie's amended motion to reconsider included a request to reopen the proofs based on purported newly discovered

evidence. The trial court denied that motion, and Julie appeals. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Julie and Joshua were married in September 1998 and have no children. On January 20, 2012, Julie filed a verified petition for dissolution of marriage. In her petition, she requested that the court divide the parties' marital property and debt in just proportions. She alleged that "[b]oth parties are capable of supporting themselves and are not seeking maintenance." That same day, Joshua filed a *pro se* appearance and waived service of process.

¶ 5 It is necessary to provide some background about the parties and their marital property. Joshua owns and operates two companies: J.B. Harris & Company, Inc., which is engaged in the business of remodeling and rehabilitating homes, and JB Harris Properties, Inc., which purchases and manages rental properties. It appears that Joshua and his mother are the only employees of the companies. The parties have never had the businesses formally appraised. What the record reflects regarding the values of those companies comes primarily from Joshua's own estimates on various financial documents. However, Joshua readily acknowledged that his valuations were essentially guesses, some of which may have been artificially inflated for purposes of obtaining credit. It is undisputed that Julie had little, if any, involvement with the businesses. Indeed, she testified that she did not even know exactly what the property management company did. Julie has a doctorate of psychology degree, having graduated in October 2011 and accumulated student debt in excess of $200,000.

¶ 6 The marital property includes numerous parcels of real estate in Elgin, Illinois that produce rental income: 515 Van Street; 1518-1520 Meyer Street; 1470-1472 Meyer Street; 653 Sherman Avenue; 570 N. Spring Street; 161-163 Ann Street (the Ann Street property); and 315-

317 Douglas Avenue (the Douglas Avenue property). These properties have apparently been encumbered by mortgages at all relevant times. Prior to the parties' settlement negotiations, some of the properties were in Joshua's name and others were titled to Joshua and Julie; one property was owned by one of the businesses, and another was titled to Joshua, Julie, and Joshua's parents. Although Julie eventually had the properties appraised during the pendency of these proceedings, one of the primary points of contention between the parties is whether Julie was fairly apprised during settlement negotiations of the values of the real estate.

¶ 7 Joshua and Julie originally entered into a marital settlement agreement in January 2012, before the dissolution action was even filed. On February 21, 2012, the court entered a judgment for dissolution of marriage which incorporated that agreement. Pursuant to the February 2012 judgment, Julie received the Douglas Avenue property and a 2011 Toyota Prius. Joshua received the remaining real estate and retained responsibility for the debts and obligations of the two businesses. Pursuant to the February 2012 judgment, the parties were to refinance the real estate and execute quit claim deeds to each other to effectuate the settlement. The parties would "retain the furniture and furnishings and miscellaneous property they now have in their possession as previously divided," and they agreed to be responsible for debts incurred in their respective names. The parties waived maintenance as well as any claims to each other's pensions.

¶ 8 In September 2012, Julie petitioned to vacate the February 2012 judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2014)). Count I of the petition alleged unconscionability and fraud, and count II alleged mutual mistake. Among the allegations was that Joshua had misrepresented the value of the marital property during settlement negotiations. Julie supported that allegation with a June 2012 financial statement that Joshua had submitted to PNC Bank for purposes of obtaining financing. Furthermore, Julie

alleged in her petition that she had been under the impression that the Douglas Avenue property she received was subject to a 15-year mortgage; in reality, it was subject to an approximately $170,000 balloon note that matured shortly after the judgment for dissolution of marriage was entered. On March 13, 2013, following an evidentiary hearing, the trial court, Robert J. Morrow presiding, vacated the February 2012 judgment. The record on appeal does not contain a transcript of the court's oral findings. According to the written order, the court determined that the terms and conditions of the January 2012 settlement agreement were unconscionable and that there was a mutual mistake of fact in that both parties failed to realize that the Douglas Avenue property was subject to a balloon mortgage due in April 2012.

¶ 9 On March 19, 2013, Julie's attorney withdrew from the case. Thereafter, Joshua and Julie engaged in settlement negotiations without the assistance of counsel. On March 26, 2013, they met at a restaurant and were accompanied by Julie's uncle, Vernon Young, and Joshua's sister, Rachel Harris, who served as witnesses to the negotiations. The discussions were apparently heated and emotional, and the group was asked to leave the restaurant. They went to Vernon's house, where the parties negotiated and ultimately signed a typed agreement (the March 2013 agreement).

¶ 10 After allocating certain personal property between the parties, the March 2013 agreement provided that Julie would receive the *Ann Street property* as of the date of the final judgment. Joshua would pay off the mortgage balance of $18,000 on that property over the course of one year from the signing of the agreement, at which time Julie would own the home free and clear. As of the signing of the agreement, Julie assumed responsibility for the maintenance, taxes, and "tenant issues" associated with the Ann Street property. Julie, in turn, would "sign off any interest or claim to the rest of the properties owned by Joshua." Furthermore, the agreement

specified that Joshua would pay $4,700 to Julie by April 30, 2013, unless the agreement was not approved by the court as of that date, in which case payment would be due 30 days after the final judgment. Julie was to obtain ownership of the "Triumph automobile," which apparently was a classic car that was being restored in Texas. Joshua was tasked with ensuring that "the automobile is complete" and delivered to Julie within 90 days of the final judgment. The agreement concluded with the following "additional stipulations":

> "1. If all the above is met, Julie will waive all current and future rights to [the two businesses] and any other future ownership in any other companies or real estate.
>
> 2. If all the above is met, Joshua will waive all current and future rights to any business or financial interest Julie pursues.
>
> 3. With the signing of this agreement, we agree the marriage will be dissolved and no other further legal, or other, retribution can or will be sought.
>
> 4. This agreement was entered upon and mutually agreed upon by Joshua and Julie. Aside from legal verbiage rewritten by their attorneys and further supported by Joshua and Julie all assets and liabilities distributed above are binding."

The parties signed the agreement, and Vernon and Rachel signed as witnesses.

¶ 11 Julie apparently continued to work with her attorney for a period of time even after he withdrew from the case. Specifically, in April 2013, Julie e-mailed Joshua a draft marital settlement agreement that she had received from her attorney. Although this draft included certain blank spaces to be filled in, Julie acknowledged in her testimony that this was "very similar" to the March 2013 agreement and that it was sent to Joshua "for the purposes of finalizing this agreement." Indeed, although the April 2013 draft was significantly more detailed than the March 2013 agreement and contained many additional provisions, the basic allocation of

property was unchanged. This draft was never signed by the parties.

¶ 12 The court continued the matter numerous times throughout 2013 as the parties refinanced and retitled their real estate in accordance with the terms of the March 2013 agreement. The record on appeal does not include transcripts of these proceedings, but it appears that the parties appeared *pro se* on several occasions. In early 2014, the parties' attorneys filed their appearances and Julie expressed an interest in having the real estate appraised. The appraisals were performed in Spring 2014, and the properties were valued at $1,222,000, collectively.

¶ 13 On March 7, 2014, Joshua moved to enforce the March 2013 agreement. In her response to the motion, Julie argued that, based on Joshua's past conduct in the case, any dealings with him "must be looked at suspiciously." Using the property valuations that Joshua had included on certain loan applications, Julie calculated that the March 2013 agreement split the parties' property 90/10 in favor of Joshua, which she contended was unconscionable. She insisted that these were the same type of circumstances that had led Judge Morrow to find that the January 2012 agreement was unconscionable.

¶ 14 On July 23-24 and September 2-3, 2014, the trial court, judge Kathryn D. Karayannis presiding, held an evidentiary hearing on the motion to enforce the settlement. We highlight only those points that are helpful for understanding the trial court's rulings and Julie's arguments on appeal.

¶ 15 Upon examination by Joshua's counsel, Julie testified that shortly after Judge Morrow vacated the February 2012 judgment, Joshua contacted her and they agreed to discuss settlement. She explained that it was her intention to resolve all matters regarding the marital estate, adding that both she and Joshua appeared voluntarily at the meeting on March 26, 2013. When she signed the agreement that day, she did not mention that she needed more time to understand the

agreement. Nor did she ask for time to conduct appraisals. She acknowledged that she was satisfied with the terms of the agreement when she entered into it and that she entered into it freely and voluntarily. Pursuant to the March 2013 agreement, she was to receive the Ann Street property, which was her preference, and Joshua would pay off the mortgage on the property. She also acknowledged that the parties executed documents in 2013 to refinance their properties and that this was "related to the terms and conditions of" the March 2013 agreement.

¶ 16 During rehabilitation examination by her own counsel, Julie testified that when Joshua contacted her in March 2013, she wanted to sit down with her attorney and negotiate, but Joshua refused. She then told Joshua that she wanted to go to a mediator, and he responded that there was no reason that they could not do it themselves. At the time of the March 26, 2013, meeting, she had been battling depression for many months, was not employed full-time, was living with her grandparents, and had gone through her savings. She testified that she signed the agreement both because it was what she and Joshua agreed to at the end of the night and because she did not "see any other way out." Specifically, she could not imagine going through another trial, and she lacked money to conduct discovery. She was at her emotional threshold. Furthermore, she testified, although the parties discussed her student loans, Joshua did not agree that evening to pay any of those loans. She also had certain other debts that were not described in the March 2013 agreement. With respect to the vintage car that she received under the agreement, although no specific valuation was offered into evidence, Julie testified: "It was priceless to me."

¶ 17 Vernon, Julie's uncle, testified about his observations regarding the settlement discussions on March 26, 2013. Joshua and Julie discussed their real estate, but "[n]ot in exact dollar values." Julie told Joshua that she wanted the Ann Street property, and that was the only real estate she asked for. Vernon did not recall seeing a document setting forth the values of all

the properties. He said that at the end of the negotiations, both Joshua and Julie were upset they were separating but felt that the agreement served both parties. According to Vernon, Julie did not appear hesitant, and she felt that it was a good agreement. Nobody forced or coerced Julie, and the agreement was entered into freely and voluntarily.

¶ 18 Rachel, Joshua's sister, also testified about her observations of the March 26, 2013, settlement negotiations. She was shown "Defendant's Exhibit 13," which she identified as a document that the parties used during the course of their negotiations "[t]o discuss the value of the properties and the rent money and taxes."[1] Rachel did not know who prepared that exhibit. She recalled that Julie wanted the Ann Street property because it did not have a mortgage. Julie never indicated that she wanted any other property. Rachel testified that she took handwritten notes during the meeting and then typed the agreement. The parties looked satisfied at the end of the meeting, and nobody threatened the parties or coerced them to sign the documents. She believed that the parties entered into the agreement freely and voluntarily.

¶ 19 On examination by his own counsel, Joshua testified that in preparation for the evidentiary hearing on Julie's petition to vacate the February 2012 judgment, he had turned over various financial documents to Julie and made a full disclosure of his assets and liabilities during the discovery process. According to Joshua, it was *Julie* who initiated settlement discussions in March 2013 shortly after the judgment of dissolution was vacated. He identified Defendant's

[1] Although Defendant's Exhibit 13 is somewhat confusing at it contains a top portion and a bottom portion that reflect slightly different financial information regarding some of the properties, the total estimated value of the parties' real estate was listed on this document at approximately $1,250,000, subject to mortgages. As previously mentioned, the appraiser ultimately valued the properties at $1,222,000.

Exhibit 13 as a list of all the properties that the parties owned, explaining that the document was prepared during the course of discovery in 2012. Some of the documents that he looked at in preparing Defendant's Exhibit 13 were tax bills, insurance bills, and the newspaper to see what comparable properties were selling for. He testified that the property values listed in that document were estimated market values. The document was brought to the March 26, 2013, meeting to refresh the parties as to what the properties were worth, what was owed, and what rents were generated.

¶ 20 According to Joshua, Julie had commented to him that she had no desire to have ownership interests in his businesses or to take away his livelihood. Julie also said that her student debt was *her* debt, just as the mortgages on the properties were *his* debt for his career as a landlord. Julie only wanted the Ann Street property, as it was subject to an $18,000 mortgage that he would pay off. Joshua testified that the parties did certain things in reliance on the March 2013 agreement, including distributing some of the personal property identified in the agreement and refinancing several loans. The Ann Street property was still pledged as collateral to secure a mortgage for another property, but he would fulfill the terms of the March 2013 agreement if the court were to enforce it.

¶ 21 On cross-examination, Joshua was questioned at length about various loan applications and other documents that he had submitted and the representations therein regarding his assets. He testified that he had never had his businesses professionally appraised. He strongly implied, if not outright admitted, that he had inflated the values on certain loan applications. For example:

> "Q. Why would you put a figure down that you didn't know was accurate?
>
> A. It's business 101, sir.

Q. Explain.

A. Enhance the positive and eliminate the negative.

Q. Um, pump up the value to obtain credit?

A. Wow. Yes.

Q. Lie to obtain credit?

A. You enhance the positive and eliminate the negative."

Furthermore, Joshua testified that he did not recall whether the topic of his income came up during the March 26, 2013, meeting. Nor did he know anything about Julie's income at the time. Although he did not know the exact amount of equity in real estate that he received versus what Julie received under the March 2013 agreement, he acknowledged that he received substantially more than she did.

¶ 22 On redirect examination, Joshua testified that he had repeatedly taken loans from his family in recent years because he did not have enough money to pay business expenses. Documentation of this debt was submitted into evidence. Joshua also explained that he never deliberately changed the values of assets in loan applications, insisting that he made his best guesses.

¶ 23 Following arguments by the parties, the court granted Joshua's motion to enforce the settlement agreement and made extensive oral findings. The court found that Julie did not sign the March 2013 agreement under duress, reasoning that: Julie testified that she entered the agreement freely and voluntarily; the April 2013 draft of the settlement agreement prepared by Julie's attorney was "almost identical to" the March 2013 agreement; the negotiations took place at Julie's uncle's house; and, following the agreement, both parties appeared in court and indicated that they were refinancing properties. With respect to the issue of conscionabilty, the

court noted that Judge Morrow had found the February 2012 judgment to be unconscionable under circumstances where neither party realized that the real estate Julie received was subject to a balloon note that could not be refinanced. The court explained that it had not seen a case where one agreement was found to be unconscionable and then the parties subsequently entered a "very similar" agreement. According to the court, the fact that Julie had previously attended the proceedings on her petition to vacate the February 2012 judgment was important in determining whether the March 2013 agreement was conscionable.

¶ 24 Nor could the court determine that the settlement was hugely disproportionate, in light of the fact that the court did not know Julie's income at the time of the settlement. The court emphasized that Julie knew the value of the properties, having sat through the prior evidentiary hearing at which financial matters, including Joshua's estimations as to the values of the businesses, were addressed. The court indicated that it probably would have made the same finding of unconscionability that Judge Morrow had with respect to the February 2012 judgment. However, the March 2013 agreement was not unconscionable, given that Julie "knew everything going into this that [she] could have known" and "still made that same deal." Julie knew exactly what she was doing.

¶ 25 Furthermore, the court explained, it could not ignore the evidence that Julie wanted to be debt free. The court also recalled evidence that Julie wanted Joshua to keep his business. According to the court, Julie got both of these things in the March 2013 agreement and kept her own income and business, if she had one. Julie came out of the deal with a house with no mortgage, a classic car that she had described as being "priceless" to her, some personal property, and student loan debt. Although this was not "close to a 50/50 split," it was what Julie "bargained for the second time around." According to the court, Julie was "clearly an intelligent

person" and had a doctorate degree in psychology. The court acknowledged that it had not made a determination as to the percentage split between the parties and had not determined the values of the businesses. The court reasoned that at the time of the March 2013 negotiations, Julie had been married to Joshua for 14 years, knew that he ran the businesses, and knew that those businesses had value based on his estimates in a loan application that she had seen.

¶ 26 Moreover, the court stated that Julie did not request maintenance in her petition for dissolution, so the court did not need to consider that issue. Because the March 2013 agreement was enforceable and specified the division of property, the court determined that the only remaining issue was grounds for dissolution. The court continued the matter for prove-up and entry of the settlement agreement.

¶ 27 On September 15, 2014, Julie filed a motion to reconsider the order enforcing the March 2013 agreement. The court held a hearing on that motion on October 7, 2014, but the record on appeal does not contain a transcript of the proceedings. The written order reflects that the motion was denied for reasons set forth on the record. That same day, the court granted Joshua leave to file his response to Julie's January 20, 2012, verified petition for dissolution of marriage *instanter* (due to an oversight, Joshua had never answered the petition). In his verified response, Joshua admitted all factual allegations in the petition.

¶ 28 On October 21, 2014, Joshua filed a motion for summary judgment "on the issue of grounds, property classification and division, [and] allocation of debt and maintenance." He noted that he had admitted the factual allegations in Julie's verified petition for dissolution of marriage and that the court had ruled that the March 2013 agreement was enforceable. Accordingly, he requested summary judgment on these issues and asked that a judgment for dissolution of marriage be entered immediately.

¶ 29 In her response to the motion for summary judgment, Julie argued that the court needed to hold a prove-up hearing to make findings with respect to "jurisdiction, grounds, etc." According to Julie, "[t]here are unresolved issues between the parties that may include tax issues, debt issues, personal property issues, health insurance issues, and finally the issue of attorneys' fees." She contended that there was nothing in the March 2013 agreement addressing the issue of property acquired after the date of the agreement. Nor had the parties ever "agreed to a resolution of tax issues, write offs, attorneys' fees contribution, distribution of debt, etc."

¶ 30 On October 31, 2014, Julie filed a petition to allocate property not disposed of by the March 2013 agreement. She noted that one of the terms of the March 2013 agreement was that Joshua would pay off the mortgage on the Ann Street property within one year. She also recalled that the agreement stated that "[i]f all the above is met, Julie will waive all current and future rights to [the businesses] and any other future ownership in any other companies or real estate." According to Julie, because the Ann Street property was still encumbered, she had no obligation to release her rights in the businesses or to release her rights to any future ownership in any other companies or real estate. Therefore, she contended, she had not waived her interests in these properties and they were subject to division by the court. On November 24, 2014, the trial court denied Julie's petition "for all the reasons set forth in the record." The record on appeal does not contain a transcript of this hearing. The court continued the matter to December 17, 2014, for argument on Joshua's motion for summary judgment.

¶ 31 On December 17, 2014, the court apparently granted the motion for summary judgment and made oral findings. The record does not contain a transcript of those proceedings. The written order states that the matter was continued to December 31, 2014, for "entry of summary judgment order and entry of judgment for dissolution with attached agreement of the parties

dated March 26, 2013."

¶ 32 On December 31, 2014, the court entered three orders. The first was a judgment for dissolution of marriage, which incorporated the March 2013 agreement. The judgment indicated that "by the judicial admissions created by the parties' pleadings and the Court's findings contained in the record and its Order of September 3, 2014, the Court finds that each party is responsible for their own individual debts related to their respective business interests." The court also found that based on the judicial admissions in the pleadings, "each party is employed, capable of supporting themselves, and is not in need of maintenance." Accordingly, the court did not award maintenance to either party. In a second order on December 31, 2014, the court granted Joshua's motion for summary judgment. That order contained language similar to what was reflected in the judgment for dissolution of marriage. The court's third order stated that the court found that the March 2013 agreement is enforceable, not unconscionable, and "disposes of all issues."

¶ 33 On January 30, 2015, Julie, through new counsel, filed a motion to reconsider the court's "ruling on December 31, 2014." Julie subsequently filed an amended motion to reconsider raising seven issues: the judgment is incomplete; the agreement is modifiable; no agreement existed; the court should re-open the proofs; Joshua's fraud made the agreement unconscionable; the agreement violates public policy; and Julie suffered duress. Many of these arguments were being raised for the first time. In support of her request to reopen proofs, Julie insisted that Defendant's Exhibit 13 (the document that Joshua and Rachel testified the parties used to negotiate with respect to the real estate) was not the actual document that Joshua had shown her on March 26, 2013. Instead, the document that Joshua had given her indicated that the real estate was worth substantially less than what was reflected in Defendant's Exhibit 13. Julie submitted

an affidavit in which she explained, in relevant portion, that: she first saw Defendant's Exhibit 13 at the evidentiary hearing; she moved three times since March 2013 and had misplaced documents; for several months before and after the evidentiary hearing, she attempted unsuccessfully to locate the actual chart that Joshua had given her; she located the chart on January 29, 2015; and Exhibit A to the amended motion to reconsider was a true and accurate copy of the chart that Joshua gave her in March 2013.[2] As an additional reason to reopen proofs, Julie alleged that Joshua had sold one piece of real estate after the evidentiary hearing. She urged the court to "open the proofs to hear evidence of the sale and the sale price to determine if, in fact, Joshua was truthful about the value of the property."

¶ 34 Joshua subsequently submitted an affidavit averring that he had never seen the document that was attached as Exhibit A to the amended motion to reconsider.

¶ 35 On April 21, 2015, the trial court denied Julie's amended motion to reconsider. The court stated that much of Julie's affidavit was an attempt to highlight or embellish her own trial testimony and that the only new matter was the allegedly different chart. According to the court: "And if I didn't state it in my ruling when I enforced the contract, I certainly will state it now. *** I did not and do not find Ms. Harris' testimony at those proceedings credible. I do not believe that there is any way, shape or form if a different chart existed she wouldn't have raised it during her testimony or during her motions filed thereafter." Nor, the court concluded, was the chart newly discovered evidence that could not have been located before the evidentiary hearing.

¶ 36 A written order denying the amended motion to reconsider was entered the next day.

[2] The chart attached as Exhibit A to Julie's amended motion to reconsider was identical to the bottom portion of Defendant's Exhibit 13, except for the fact that the total estimated value of the properties was $441,000 less.

Julie timely appeals.

¶ 37 II. ANALYSIS

¶ 38 While the parties were briefing this appeal, Joshua filed a motion to strike portions of Julie's appellant's brief. Specifically, he moved to strike those portions of the statement of facts that were "argumentative, prejudicial and/or conclusional [*sic*]." He also moved to strike those portions of Julie's argument and statement of facts pertaining to (1) "any testimony and/or documentary evidence presented during the trial of March 25 and 26, 2013 [*sic*] relating to the Judgment of February 21, 2012," and (2) "the chart *** attached as an exhibit to [Julie's] Amended Motion for Reconsideration." On December 23, 2015, a motion panel of this court granted the motion.

¶ 39 Julie asks us to reconsider our December 23, 2015, order. Having reviewed the entire record in detail, we have determined that it would be inappropriate to strike any portion of Julie's brief. When a brief contains improper argumentation that does not interfere with our review, we may elect to simply disregard the offending statements. See *Cottrill v. Russell*, 253 Ill. App. 3d 934, 938 (1993). Although Julie's brief does not present an accurate picture of all the evidence presented to the trial court, the improprieties do not frustrate our review. Additionally, to fully understand the circumstances of the parties' March 2013 settlement negotiations, it was necessary for us to read the transcript of the evidentiary hearing concerning the parties' first settlement agreement. That transcript is included in the record on appeal. It was appropriate for Julie to refer to that transcript, insofar as doing so put the March 2013 settlement negotiations into context.

¶ 40 Moreover, one of the issues on appeal is whether the trial court erred in refusing to reopen the proofs in light of the chart that Julie attached to her amended motion to reconsider.

Irrespective of whether her argument ultimately has merit, there is nothing inappropriate about Julie raising this issue on appeal, and it was necessary for us to review the chart to address the argument. For these reasons, we hereby grant Julie's motion to reconsider the order striking certain portions of her appellant's brief.

¶ 41 We now turn to the merits of the appeal. The issues that Julie raises generally fall into three categories: the judgment of dissolution is incomplete such that there was no final judgment, the court erred in enforcing the March 2013 agreement, and the court erred in refusing to reopen the proofs in light of newly discovered evidence.

¶ 42 (A) Whether the Judgment is Incomplete, Requiring Testimony to Make a Determination on the Remaining Issues

¶ 43 We begin with Julie's contention that the judgment is incomplete, as her argument implicitly calls our jurisdiction into doubt. If Julie is correct that there was no final judgment, we lack jurisdiction and must dismiss the appeal. See *In re Marriage of Alyassir*, 335 Ill. App. 3d 998, 999 (2003) (the appellate court has an independent duty to confirm its jurisdiction).

¶ 44 At the time the court rendered the December 31, 2014, judgment for dissolution of marriage, section 401(b) of the Illinois Marriage and Dissolution of Marriage Act provided that "[j]udgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for child custody, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property." 750 ILCS 5/401(b) (West 2014).[3] According to Julie, "[t]he agreement did not

[3] Section 401(b) was amended effective January 1, 2016, to replace the term "child custody" with "the allocation of parental responsibilities," but the amendment does not have any effect on this appeal.

dispose of all of the issues in the divorce case, so the Judgment did not dispose of all of the issues of the divorce case." Therefore, she proposes, the court erred in granting Joshua's motion for summary judgment and in denying a trial on outstanding issues.

¶ 45 It is clear that the trial court entered a final judgment and that we have jurisdiction over the appeal. The parties have no children, so the court was not tasked with determining custody or setting child support. Moreover, the court specifically declined to award maintenance to either party. Additionally, the court denied Julie's petition to allocate property not disposed of by the March 2013 agreement and granted summary judgment in favor of Joshua, so the court obviously determined that all marital property was accounted for. Accordingly, the trial court indeed addressed all required issues, and we have jurisdiction pursuant to Supreme Court Rules 301 (eff. Feb. 1, 1994) and 303 (eff. Jan. 1, 2015), which govern appeals from final judgments in civil cases.

¶ 46 Whether the trial court was required to hold additional proceedings before making rulings on those issues is an entirely separate question, and Julie suggests that a number of loose ends justify further proceedings. According to Julie: "[I]n conjunction with signing the agreement on March 26, 2013, Joshua promised to refinance all of the mortgages on all of the real estate to remove Julie's name and liability from same. *** That part of the agreement was not set forth in the Judgment for Dissolution of Marriage." Julie also argues that the March 2013 agreement did not address the issues of debt, maintenance, or "any real property owned by Joshua and Julie jointly or Joshua and Julie and [Joshua's parents]." Furthermore, she contends, "the parties' own conduct shows that the agreement was not a complete agreement disposing of all issues between them."

¶ 47 As we shall explain, our ability to review Julie's arguments on these points is frustrated

by the insufficiency of the record on appeal. At the evidentiary hearing on Joshua's motion to enforce the March 2013 agreement, Julie took the position that the agreement was unconscionable *precisely because* it allocated the vast majority of the marital property to Joshua and left her without maintenance and saddled with debt. Immediately after granting Joshua's motion to enforce the March 2013 agreement, the court stated that it did not believe that there were any remaining issues to be decided apart from grounds. The court explained that Julie's verified petition for dissolution of marriage did not seek maintenance and that the parties' agreement determined how they were "going to divide everything up." Julie's counsel did not argue at that time that there were any issues to be resolved other than grounds.

¶ 48 However, Julie subsequently shifted gears and filed a petition to allocate property not disposed of by the terms of the March 2013 agreement, taking the position that other issues were indeed pending. On November 24, 2014, the court entered a written order denying Julie's petition "for all of the reasons set forth in the record." However, the record on appeal does not contain a transcript of those proceedings, a bystander's report, or an agreed statement of facts. See Ill. S. Ct. R. 323 (eff. Dec. 13, 2005).

¶ 49 In her response to Joshua's motion for summary judgment, Julie similarly contended that the March 2013 agreement did not resolve all of the issues in the case. It appears that the trial court granted Joshua's motion for summary judgment at a hearing on December 17, 2014, and made certain findings that are not reflected in the record on appeal. The record does not include a transcript of the December 17 hearing, but the written order from that day indicated that the case was continued to December 31, 2014, for "entry of summary judgment order and entry of judgment for dissolution." The December 31, 2014, order granting summary judgment to Joshua stated that "by the judicial admissions created by the parties [*sic*] pleadings *and the Court's*

findings contained in the record and its Order of September 3, 2014 the Court finds that there is no genuine issue of material fact that each party is responsible for their own individual debts as well as all debts related to their respective business interests." (Emphasis added.) The judgment for dissolution of marriage entered the same day contained similar language.

¶ 50 Furthermore, in her amended motion to reconsider the orders entered on December 31, 2014, Julie argued that "[t]he court, when incorporating the agreement typed by the parties into the Judgment, entered a Judgment for Dissolution that did not dispose of all issues." Although the record on appeal does not contain the parties' arguments at the April 21, 2015, hearing on the amended motion to reconsider, it does contain the court's oral ruling denying the motion. However, the court specifically declined to revisit its "findings in relation to many of the arguments that have been made here today," except as it pertained to the alleged newly discovered evidence.

¶ 51 Under these circumstances, the record is insufficient for us to address Julie's argument that "the judgment is incomplete." It is readily apparent that the trial court made findings on these matters and that those findings are not reflected in the record on appeal. Accordingly, we presume that the court had a sufficient legal and factual basis when it rejected Julie's argument that further proceedings were necessary before entering a judgment for dissolution of marriage. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984) ("[A]n 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. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.").

¶ 52 Moreover, with respect to the issue of maintenance, we note that Julie's verified petition

for dissolution of marriage alleged that "[b]oth parties are capable of supporting themselves and are not seeking maintenance." The trial court apparently treated this as a judicial admission that Julie did not require maintenance, and Julie does not specifically argue on appeal that this ruling was erroneous. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) (points not argued in the appellant's brief are forfeited). To the extent that Julie mentions in passing that section 2-616(c) of the Code of Civil Procedure allows a party to amend his or her pleadings "at any time, before or after judgment, to conform the pleadings to the proofs" (735 ILCS 5/2-616(c) (West 2014)), she fails to direct our attention to any place in the record where she filed a motion for leave to amend her pleadings.

¶ 53 (B) Whether the Court Erred in Enforcing the March 2013 Agreement

¶ 54 Julie advances four reasons why she believes that the court erred in finding that the March 2013 agreement was enforceable: (1) no agreement existed; (2) the agreement is unconscionable due to fraud, because it is one-sided and oppressive, and because Julie was under duress; (3) the agreement violates public policy; and (4) the agreement is modifiable.

¶ 55 (1) Whether an Agreement Existed

¶ 56 Julie contends that no agreement existed, thus invalidating the court's judgment. She argues that the parties' conduct following the execution of the March 2013 agreement (refinancing and retitling real estate over the next year without moving for entry of a judgment for dissolution of marriage) shows that this was "at best a memorandum of the intentions of the parties." She also proposes that "[t]he fact that the agreement itself contemplated the parties' attorneys preparing a document with 'legal verbiage' shows that they intended to enter into a different valid and enforceable agreement." Furthermore, she says, Joshua's breach permitted her "to refuse to proceed with the intentions of the parties."

¶ 57 Julie cites no authority in this section of her brief, and her entire argument on these matters consists of less than one page. Accordingly, the argument is forfeited. 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 (2d) 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))). In her reply brief, Julie submits that "no legal authority is required for this argument, as it is merely a factual one." We disagree. She should have supported her argument with legal authority addressing contract formation and breach of contract.

¶ 58 The argument is also subject to forfeiture because Julie did not raise it until after the court had entered the judgment for dissolution of marriage. At the evidentiary hearing on Joshua's motion to enforce the March 2013 agreement, Julie argued that the agreement was unconscionable. She did *not* argue that the document she signed was merely a memorandum of the parties' intentions. "Arguments raised for the first time in a motion for reconsideration in the circuit court are forfeited on appeal." *Evanston Insurance Co. v. Riseborough*, 2014 IL 114271, ¶ 36; see also *Caywood v. Gossett*, 382 Ill. App. 3d 124, 133-34 (2008) (the plaintiff first raised the issue of her mental incapacitation in her motion to reconsider the order dismissing her lawsuit, so the argument was forfeited on appeal). The purpose of a motion to reconsider is not to raise issues that could have been addressed earlier but, rather, "to bring to the court's attention newly discovered evidence that was not available at the time of the original hearing, changes in existing law, or errors in the court's application of the law." *Riseborough*, 2014 IL 114271, ¶ 36.

¶ 59 We recognize that forfeiture is a limitation on the parties, not this court. *People ex rel. T-Mobile USA, Inc. v. Village of Hawthorn Woods*, 2012 IL App (2d) 110192, ¶ 39. In appropriate

cases, we have relaxed the forfeiture rule to "address a plain error affecting the fundamental fairness of a proceeding," "maintain a uniform body of precedent," and to "reach a just result." *In re Darius G.*, 406 Ill. App. 3d 727, 732 (2010). In the present case, we see no reason to overlook the forfeiture of any of the arguments that Julie first raised in her amended motion to reconsider. She had ample opportunity during the lengthy evidentiary hearing to challenge the March 2013 agreement on any bases that she desired. Nor did the trial court make specific rulings on the arguments that Julie first raised in her amended motion to reconsider.

¶ 60 (2) Whether the March 2013 Agreement is Unconscionable

¶ 61 Julie argues that the March 2013 agreement is unconscionable because Joshua committed fraud, the agreement is one-sided or oppressive, and Julie suffered duress. Julie did not argue that the agreement was procured by fraud until after the judgment for dissolution had been entered. Accordingly, apart from her contentions pertaining to the alleged newly discovered evidence (which we will consider separately), Julie has forfeited her argument that the March 2013 agreement is unconscionable as a product of fraud. See *Riseborough*, 2014 IL 114271, ¶ 36 (points first raised in a motion to reconsider are forfeited on appeal). However, the trial court made detailed findings as to whether the agreement is unconscionable insofar as it is one-sided or was executed under duress, and we now consider Julie's arguments that such findings were erroneous.

¶ 62 "The inquiry into unconscionability requires two distinct considerations: (1) the conditions under which the agreement was made; and (2) the economic circumstances of the parties resulting from the agreement." *In re Marriage of Smith*, 164 Ill. App. 3d 1011, 1017 (1987). "In determining whether the parties' relative economic positions are unconscionable, courts employ commercial concepts of unconscionability: an absence of a meaningful choice on

the part of one of the parties combined with terms unreasonably favorable to the other party." *Smith*, 164 Ill. App. 3d at 1017. "A contract is unconscionable when it is improvident, totally one-sided or oppressive." *In re Marriage of Riedy*, 130 Ill. App. 3d 311, 317 (1985). However, "[a] property settlement should not be set aside merely because one party has second thoughts." *In re Marriage of Chapman*, 162 Ill. App. 3d 308, 318 (1987). Nor is unfairness alone enough to render a settlement agreement unconscionable. *Smith*, 164 Ill. App. 3d at 1020.

¶ 63 We review the trial court's rulings regarding unconscionability under the manifest-weight-of-the-evidence standard. *Smith*, 164 Ill. App. 3d at 1017. A finding is against the manifest weight of the evidence where "the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Best v. Best*, 223 Ill. 2d 342, 350 (2006). The fact that a settlement agreement may be more favorable to one party than the other does not necessarily require a reviewing court to reverse the trial court's decision. *In re Marriage of Bielawski*, 328 Ill. App. 3d 243, 253 (2002).

¶ 64 Julie argues that the March 2013 agreement is unconscionable because it is one-sided or oppressive. She first speculates that Judge Morrow must have found the February 2012 judgment to be unconscionable due to the January 2012 agreement being one-sided. However, the court's written order did not say this, and the record on appeal does not contain a transcript of Judge Morrow's oral rulings. From this questionable premise, Julie posits that the March 2013 agreement must be one-sided as it is "identical to the first [agreement], except for the switching of one property for another being awarded to [Julie.]" She also suggests that the trial court found that the March 2013 agreement "was not unconscionable specifically *because* [Julie] agreed to it a second time." (Emphasis in original.) Furthermore, Julie complains that the trial court "did not determine the percentage of the division of the assets and debts or determine the value of the

businesses." According to her calculations, she ultimately received less than 20% of the assets and more than 80% of the debts.

¶ 65 Although the trial court recognized that this was not "close to a 50/50 split," it could not find that the settlement was hugely disproportionate as the court was not presented with evidence of Julie's income. The court deemed it important that the March 2013 agreement was the deal that Julie "bargained for the second time around." To that end, the court found that Julie wanted Joshua to keep his business and that she got the benefit of her bargain, walking away with a house with no mortgage, a car that was "priceless" in her own estimation, some personal property, and her own debt. Although the trial court did not value the businesses, it found that it did not have to do so, because Julie "didn't want any part of" the businesses despite knowing that they had value. The court emphasized that Julie was married to Joshua for 14 years and was privy to his financial disclosures on a loan application.

¶ 66 We cannot say that the opposite conclusion is clearly evident or that the court's findings were unreasonable, arbitrary, or not based on the evidence presented. Julie argues that if the agreement was unconscionable the first time around, then it must be unconscionable the second time around. The fact of the matter is that the March 2013 agreement simply is not the same agreement that Judge Morrow had previously determined was unconscionable. Under the parties' first agreement, Julie received the Douglas Avenue property. It soon became apparent that that property was subject to a balloon note of approximately $170,000 that matured almost immediately after the original judgment for dissolution of marriage. Nor was Julie able to refinance that balloon loan. That is a far cry from the deal that Julie and Joshua struck in March 2013. Under this agreement, she will receive the Ann Street property free of encumbrances, which Joshua will remove at his expense. By all accounts, liberation from mortgage debt was an

important factor influencing Julie's decision to request that property.

¶ 67 Furthermore, although Joshua retains his business interests along with the majority of the real estate (and the accompanying mortgages), there is indeed evidence supporting that Julie wished for him to maintain his livelihood as a landlord while she begins her professional career. Nor did the parties have the businesses professionally appraised, so it would be impossible for us to put a precise value on the businesses. What we do know about the companies is that Joshua routinely had to borrow large sums of money from his family to pay business expenses. He also apparently overvalued his assets to obtain credit. Additionally, although Julie's student loans and other personal debts are undeniably substantial, notably absent was any evidence of the parties' expectations regarding Julie's earning capacity versus Joshua's. Julie had apparently been unemployed or underemployed for some time before the March 2013 negotiations, but she had also earned a doctoral degree relatively recently. In light of all these circumstances, it is far from certain that Joshua obtained a windfall in this deal. The trial court's finding that the March 2013 agreement is not so one-sided as to be unconscionable is not against the manifest weight of the evidence.

¶ 68 Julie separately argues that the March 2013 agreement is unconscionable because she suffered duress. "Duress has been defined as including the imposition, oppression, undue influence or the taking of undue advantage of the stress of another whereby one is deprived of the exercise of his free will." *In re Marriage of Hamm-Smith*, 261 Ill. App. 3d 209, 215 (1994). This court has recognized that it is not uncommon in divorce proceedings for parties to be upset and feel that they are under great pressure, but that does not necessarily render a settlement agreement unconscionable. *Riedy,* 130 Ill. App. 3d at 314. Julie bore the burden of proving by clear and convincing evidence that she "was bereft of the quality of mind essential to the making

of the contract." *Hamm-Smith*, 261 Ill. App. 3d at 215.

¶ 69 Julie paints a picture of herself as a person who was unemployed, depressed, living with her grandparents, without an attorney or the ability to afford one, and without knowledge of the value of the marital estate. She insists that she "was at her emotional threshold," that Joshua would not allow her to set up a meeting with an attorney, and that she "had no options." She reiterates that Joshua pressured and manipulated her by "convincing her that there were no assets of any value."

¶ 70 In finding that Julie did not sign the March 2013 agreement under duress, the court found it significant that Julie testified that she entered the agreement freely and voluntarily; that the April 2013 draft settlement agreement prepared by Julie's attorney was "almost identical to" the March 2013 agreement; that the negotiations took place at Julie's uncle's house; and that, following the agreement, both parties came to court several times over the next year and indicated that they were refinancing properties. The court also did not find Julie's testimony to be entirely credible, and we are not in a position to second-guess that determination. See *Best*, 223 Ill. 2d at 350-51 ("A reviewing court will not substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn."). Indeed, the evidence showed that while the atmosphere on March 26, 2013, may have been tense and emotional, the parties voluntarily entered the agreement and believed at the time that it was in their respective best interests to do so. Two objective witnesses, including Julie's own uncle, attested that this was an arms-length transaction and that Julie got the deal she bargained for. The trial court's findings in this respect were not against the manifest weight of the evidence.

¶ 71 (3) Whether the Agreement Violates Public Policy

¶ 72 Julie also argues that the March 2013 agreement violates public policy. Specifically, she contends that "Joshua's purpose for entering into this agreement can only be interpreted as one to avoid his obligation to support his wife." According to Julie, she required support to meet her basic needs, and an agreement which failed to provide that support is against public policy.

¶ 73 Julie forfeited this argument by not raising it until her amended motion to reconsider the December 31, 2014, judgment for dissolution of marriage. *Riseborough*, 2014 IL 114271, ¶ 36 ("Arguments raised for the first time in a motion for reconsideration in the circuit court are forfeited on appeal."). Moreover, to the extent that Julie complains that she was not awarded maintenance, as explained above, the trial court determined that Julie had made judicial admissions that she was not in need of maintenance, and Julie does not specifically challenge that ruling on appeal.

¶ 74 (4) Whether the Agreement is Modifiable, Allowing for the Modification of the Property Division and Award of Maintenance

¶ 75 For her last argument pertaining to the enforceability of the March 2013 agreement, Julie contends that because the agreement does not state that it is non-modifiable, the agreement and judgment "can be modified at any time." According to Julie, "the Court already modified the contract when it gave [Joshua] additional time to pay off the mortgage on Ann Street," and the doors are now "open to any modification."

¶ 76 Julie forfeited this argument by not raising it until her amended motion to reconsider the December 31, 2014, judgment for dissolution of marriage. *Riseborough*, 2014 IL 114271, ¶ 36. Nor do we have any idea as to exactly what modifications she is seeking, apart from apparently requesting maintenance and the wholesale nullification of the property distribution scheme set forth in the March 2013 agreement. To the extent Julie seeks maintenance, as we have explained

several times, the trial court found that she had judicially admitted that she was not in need of maintenance, and she does not specifically challenge that ruling on appeal.

¶ 77 (C) Whether the Court Erred in Refusing to Reopen the Proofs

¶ 78 Finally, Julie argues that the trial court erred in denying her request to reopen the proofs. She argues that the document attached as Exhibit A to her amended motion to reconsider, *not* Defendant's Exhibit 13, was the real document that she and Joshua reviewed while engaging in settlement negotiations. (As noted above, Defendant's Exhibit 13 identified the values of the parties' real estate and listed higher total estimated values than what the properties ultimately appraised for. Exhibit A to the amended motion for reconsideration, on the other hand, listed lower estimated values than Defendant's Exhibit 13.) Julie also argues that the court should reopen proofs to hear evidence that Joshua sold one of the pieces of real estate in October 2014.

¶ 79 In deciding whether to reopen proofs, a trial court should consider "whether the moving party has provided a reasonable excuse for failing to submit the additional evidence during trial, whether granting the motion would result in surprise or unfair prejudice to the opposing party, and if the evidence is of the utmost importance to the movant's case." (Internal quotation marks omitted.) *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 55. The court should also consider whether the motion was brought only after judgment was entered, as opposed to during the hearing. See *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1077-78 (2007) (one of the bases for distinguishing the matter from another case was that the plaintiff sought to reopen the proofs only after judgment had been entered). If the case is tried without a jury, greater liberty should be allowed in reopening proofs. *Bennoon*, 2014 IL App (1st) 122224, ¶ 55. Nevertheless, "[i]f evidence offered for the first time in a posttrial motion could have been produced at an earlier time, the court may deny its introduction into evidence." (Internal

quotation marks omitted.) *General Motors Acceptance Corp.*, 374 Ill. App. 3d at 1077. We review the trial court's decision to deny a request to reopen proofs for abuse of discretion. *Bennoon*, 2014 IL App (1st) 122224, ¶ 53. "A court abuses its discretion only if it acts arbitrarily, without the employment of conscientious judgment, exceeds the bounds of reason and ignores recognized principles of law; or if no reasonable person would take the position adopted by the court." (Internal quotation marks omitted.) *Bennoon*, 2014 IL App (1st) 122224, ¶ 30.

¶ 80 The trial court did not abuse its discretion in refusing to reopen the proofs. It is clear from Julie's own affidavit that the chart she attached as Exhibit A to her motion was not newly discovered evidence that could not be produced earlier. She explained that she had attempted to locate the chart "[f]or several months prior to and subsequent to the trial," but averred that she did not find it until January 29, 2015 (one day before the 30-day deadline to file a post-judgment motion). The only excuse that she offered was that she had moved and the chart had been misplaced. Therefore, by her own admission, the chart was in her possession at all relevant times. Moreover, she did not advise the court during the evidentiary hearing that she was attempting to locate this chart. Nor did she cross-examine Joshua as to whether Defendant's Exhibit 13 was the document that the parties actually reviewed in March 2013. Under these circumstances, it is clear that Julie did not provide a reasonable excuse for failing to present the proffered chart at the evidentiary hearing. Additionally, even if this evidence was of the utmost importance to her case, reopening the proofs would have been prejudicial to Joshua, requiring him to incur attorney fees for another evidentiary hearing on matters that could have and should have been addressed previously. We need not comment on any credibility determinations that the trial court made in denying the request to reopen proofs, as the court acted well within its discretion even without making such determinations.

¶ 81 Moreover, the court did not abuse its discretion in refusing to reopen the proofs based upon the allegation that Joshua sold one of the properties. Julie does not inform us which property this was or how much it sold for, even though such matters are of public record. Furthermore, she does not meaningfully attempt to articulate a reason why this sale justifies reopening the proofs, particularly in light of the fact that her own expert had the marital real estate appraised prior to the evidentiary hearing.

¶ 82 III. CONCLUSION

¶ 83 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 84 Affirmed.