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2018 IL App (3d) 170775-U

Order filed December 21, 2018

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2018

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
EIAD BARGHOUTI,)	Will County, Illinois.
)	
Petitioner-Appellant/Counter-)	
Respondent,)	Appeal No. 3-17-0775
)	Circuit No. 16-D-1335
and)	
)	
LAURA O. CARILLO,)	
)	
Respondent-Appellee/Counter-)	Honorable
Petitioner.)	Jessica Colon-Sayre,
)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Carter and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* A judgment of dissolution of marriage on the basis of irreconcilable differences was affirmed.

¶ 2 The petitioner husband, Eiad Barghouti, appealed from a trial court order granting the dissolution of his marriage on the counter-petition for dissolution filed by the respondent wife, Laura Carillo.

¶ 3 **FACTS**

¶ 4 The husband, an inmate in the Illinois Department of Corrections, filed a petition for dissolution of marriage from the wife on July 27, 2016, alleging a number of grounds, including irreconcilable differences. The petition alleged that the parties were married in 2004, that they had two children (born in 1996 and 1999), and that they had lived separate and apart since July 4, 2006. The husband alleged that they had acquired financial accounts, jewelry, cars, and real estate during their marriage. He sought joint custody of the child who was still a minor. His affidavit of assets and liabilities, filed with his petition, listed no assets or liabilities.

¶ 5 The wife answered the petition, admitting the existence of irreconcilable differences. The wife then filed a counter-petition for dissolution of marriage, also alleging irreconcilable differences. In his answer to the wife's counter-petition, the husband admitted the grounds of irreconcilable differences.

¶ 6 The husband filed a motion for appointment of counsel, which was denied. Thereafter, the husband filed a motion for disclosure of assets. The wife answered the motion, asking that it be denied and contending that her Illinois Family and Support Affidavit was a sufficient disclosure. The affidavit, however, is not contained in the record. During the proceedings, the husband filed several petitions for a writ of *habeas corpus ad testificandum*. The trial court did not rule on the various petitions, except the final one, where the trial court declined to writ the husband into court.

¶ 7 The docket sheet indicates that there was a trial, but there is no record of proceedings in the record. Thereafter, the trial court entered a default judgment for dissolution of marriage on the basis of irreconcilable differences. The judgment indicated that the husband did not appear. The mother was granted sole custody of the minor child and neither party was awarded maintenance. As for the property distribution, the wife was awarded the marital residence. Each party was to retain their own personal property and vehicles. There were no joint bank accounts, and each party was to retain their separate checking, savings, and retirement accounts. Each party was to pay their own debts incurred since the date of separation and their own attorney fees. The husband appealed.

¶ 8 ANALYSIS

¶ 9 The wife did not file a brief in this court. We find, however, that the issues presented can be decided by this court without the aid of a brief by the wife. *In re Marriage of Allison*, 126 Ill. App. 3d 453, 454 (1984).

¶ 10 The husband argues that the trial court erred and abused its discretion by entering the default judgment for dissolution of marriage and denying his motion for a writ of *habeas corpus* to be present at the trial. According to the judgment of dissolution, the husband will be incarcerated until at least April 2044. One of the rights lost by a prisoner upon his incarceration is the freedom of travel and movement. Accordingly, prisoners are not free to attend civil trials, even though they may be a party, as a matter of choice. *Id.* at 457.

¶ 11 Section 135 of Code of Civil Procedure gives trial courts the authority “when necessary, to bring before them any prisoner to testify, or to be surrendered in discharge of bail, or for trial upon any criminal charge lawfully pending in the same court or to testify in a criminal proceeding in another state.” 735 ILCS 5/10-135 (West 2016). The decision whether to allow a

prisoner to personally appear in a civil proceeding is within the trial court's discretion. *Behringer v. Roberts*, 334 Ill. App. 3d 622, 629 (2002) (citing *Odom v. Odom*, 133 Ill. App. 2d 869 (1971)).

¶ 12 On appeal, it is the appealing party's burden to present a sufficiently complete record of the proceedings at trial to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). In the absence of such a record on appeal, it is presumed that the trial court acted in conformity with the law and had a sufficient factual basis for its decision. *Id.* Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.* Thus, it was the husband's burden to provide the record of proceedings from the hearing in the trial court, and in the absence of such a record, we presume that the trial court properly exercised its discretion in declining to bring the husband into court to testify and had a sufficient factual basis for the judgment of dissolution.

¶ 13 The docket indicates that the basis for granting the dissolution was irreconcilable differences, but the judgment states that the dissolution was granted on the basis of default. However, the judgment also indicates that there was a hearing on all the issues and that the trial court heard the testimony of the wife. Since the husband did not contest the grounds, and his affidavit indicates that he had no claim to any property, we find that the judgment was not granted based upon the husband's failure to appear but rather based upon the evidence before the court. See *Harrison v. Addington*, 2011 IL App (3d) 100810, ¶ 37 (we can affirm on any basis in the record, regardless of whether the trial court relied upon such ground or whether its rationale was correct). Of further note, the minor child is now 19 years old, so the custody provision of the judgment of dissolution has been rendered moot.

¶ 14

CONCLUSION

¶ 15 The judgment of the circuit court of Will County is affirmed.

¶ 16 Affirmed.