

No. 1-13-1397

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> MARRIAGE OF MARIE BRINKLEY,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County
)	
and)	No. 85 D 12964
)	
LEONARD PRZYSUCHA,)	Honorable
)	Patrick W. O'Brien,
Respondent-Appellee.)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Neville and Pucinski concurred in the judgment.

SUPPLEMENTAL ORDER

¶ 1 On March 19, 2014, this court issued its order affirming the dismissal of petitioner's post-decree proceedings. As part of the order, we directed that petitioner and her counsel show cause why the court should not impose sanctions pursuant to Illinois Supreme Court Rule 375(b) (eff. Feb. 1, 1994), as a result of petitioner's failure to cite or discuss on appeal the primary authority relied upon by the trial court and respondent.

¶ 2 On April 16, 2014, petitioner filed her response to the rule to show cause in which she advances two arguments. First, she argues that *Berge v. Mader*, 2011 IL App (1st) 103778, is distinguishable; second, she contends that she had a good faith basis to challenge the trial court's determination that her failure to list the claim for past due child support in her bankruptcy petition was not inadvertent. Neither contention convinces us that sanctions are not warranted.

¶ 3 Petitioner's argument that *Berge* is distinguishable fails to address why she neglected to mention the case in her opening brief. Simply ignoring relevant Illinois authority, particularly when that authority forms the primary basis for the ruling appealed from, is indicative of bad faith. Furthermore, petitioner failed to file a reply brief in this appeal and, therefore, her attempt to distinguish *Berge* is advanced for the first time in response to the court's rule to show cause.

¶ 4 Petitioner's further contention that she had a good faith basis for challenging the factual finding made by the trial court is specious in light of petitioner's failure to include in the record on appeal either a transcript of the hearing on respondent's motion to dismiss or a bystander's report. It is fundamental that it is the appellant's obligation to provide the court with a record sufficient to permit review of any factual findings made by a trial court and that the failure to provide an adequate record results in forfeiture of claims of error. "[T]o support a claim of error, the appellant has the burden to present a sufficiently complete record. [citations omitted] An issue relating to a circuit court's factual findings and basis for its legal conclusions obviously cannot be reviewed absent a report or record of the proceeding. [citation omitted]. *** Without an adequate record preserving the claimed error, the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156-57 (2005). See also *Cambridge*

Engineering v. Mercury Partners, 378 Ill. App. 3d 437, 445-46 (2007) ("When there is a gap in the record that could have a material impact on the outcome of the case, the reviewing court will presume that the missing evidence supported the judgment of the trial court and resolve any doubts against the appellant.") Given the absence of any record of the hearing conducted in the trial court, we cannot discern any arguable basis for petitioner's challenge to the factual determination she claims was erroneous.

¶ 5 Had petitioner fronted a discussion of *Berge* in her opening brief, she could have argued that it was distinguishable and that the trial court was wrong on the law. We do not believe such an argument would have been entirely frivolous. Therefore, we do not find that awarding respondent the attorney fees and costs incurred in the preparation of respondent's brief is appropriate. Instead, we determine that a flat sanction in the amount of \$1,000 is warranted and that this amount should be paid to respondent within 30 days of the date of this order.

¶ 6 We further find petitioner's counsel and not petitioner should be responsible for satisfying the sanction awarded. This is, after all, a lawyer's and not a layman's error.

¶ 7 For the reasons stated, petitioner's counsel, Theresa Malysa, shall pay the sum of \$1,000 to respondent on or before June 6, 2014.