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2014 IL App (3d) 130362-U

Order filed February 4, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
DIANA SOTO,)	of the 12th Judicial Circuit
)	Will County, Illinois
Petitioner,)	
)	
and)	Appeal No. 3-13-0362
)	Circuit No. 05-D-2088
MELVIN SOTO,)	
)	
Respondent-Appellee)	Honorable
)	Bennett J. Braun,
(Raychel A. Wesley, Attorney-Appellant).)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's release of the lien is affirmed because appellant failed to provide an adequate record for review.

¶ 2 Following the issuance of an order dissolving the marriage of Diana and Melvin Soto, appellant, Raychel A. Wesley, obtained a judgment against Diana for fees associated with Wesley's representation of Diana. Appellant attempted to place a lien on the former marital residence in order to collect on the judgment. Upon attempting to sell the residence, Melvin discovered the lien and filed a motion to release it. The trial court concluded that the lien was

not valid because: (1) Diana did not have any interest in the property at the time appellant attempted to place the lien on the residence; and (2) the judgment appellant obtained against Diana did not properly attach the residence. Appellant appeals, arguing that the trial court erred in making the above findings. We affirm.

¶ 3

FACTS

¶ 4 On February 11, 2009, the trial court issued a judgment dissolving the marriage of Diana and Melvin Soto. Thereafter, appellant obtained a memorandum of judgment in the amount of \$4,697.40 against Diana for attorney fees outstanding from her representation in that case. The judgment was one page, and the only address listed for Diana was 1424 Rock Run Drive, Apartment C3, Crest Hill, Illinois.

¶ 5 On May 16, 2013, Melvin filed a motion requesting that the trial court execute a judicial deed and release a lien which had been attached to the former marital residence at 1603 Sierra Highlands Drive in Plainfield (marital residence). The motion alleged that appellant filed a lien on the property in order to collect fees owed to her by Diana despite appellant's knowledge that the judgment dissolving the marriage divested Diana of any interest in the property.

¶ 6 At the conclusion of a hearing on Melvin's motion, the trial court determined that the judgment dissolving the marriage divested Diana of any interest in the marital residence. Therefore, it found that the lien placed on the residence by appellant after the judgment had issued was invalid.

¶ 7 Appellant filed an emergency order requesting the court reconsider its ruling. After hearing arguments, the court declined to reconsider. It found that the memorandum of judgment appellant obtained against Diana did not properly attach the former marital residence. Appellant appeals.

¶ 8

ANALYSIS

¶ 9 Appellant argues that the trial court erred when it ruled that: (1) the judgment of dissolution of marriage terminated all of Diana's property rights and interest in the marital residence; and (2) the memorandum of judgment did not properly attach the marital residence. After our review of the record, we conclude that appellant's allegations must fail because appellant has filed an incomplete and improper record on appeal.

¶ 10 It is well established that an appellant has the burden to present a sufficiently complete record of the proceedings in the circuit court to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984). In the absence of a complete 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. *Id.* Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.*

¶ 11 In this case, appellant's first argument is premised on the wording of the judgment of dissolution of marriage. Importantly, the common law record is missing pages 115-128, which the index lists as containing the judgment of dissolution of marriage. Without the judgment, it is impossible for us to conclude whether the trial court erred when it ruled that Diana's property rights had been terminated. Therefore, we must presume that the order entered by the trial court was in conformity with the judgment and the law. See *id.*

¶ 12 Appellant's second argument is that the memorandum of judgment included a second page which contained a legal description of the marital residence to which the judgment was attached. However, the memorandum of judgment contained in the record is a single page and does not include a legal description of the above property. Without the alleged second page, the record lacks proof that the property was attached to the judgment. Therefore, we can only

conclude that the trial court did not err when it ruled that the memorandum of judgment did not validly attach the marital residence.

¶ 13 We note that the absence of key documents was not the only problem with the record on appeal. Illinois Supreme Court Rule 321 (eff. Feb. 1, 1994) states that the record shall consist of "the judgment appealed from, the notice of appeal, and the entire original common law record."

The committee comments to Rule 321 make it clear that the rule strictly requires that the portions of the trial record that are transmitted to the court be original papers. Here, the majority of the record appellant has presented to the court has been copied from the originals. This is a violation of Rule 321 and would have been grounds for dismissal if we had not already determined that the cause should be affirmed for an insufficient record. See *Epstein v. Galuska*, 362 Ill. App. 3d 36 (2005) (if an appellant's brief does not comply with the supreme court rules, the appellate court has the authority to dismiss the appeal).

¶ 14 **CONCLUSION**

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

¶ 16 Affirmed