2015 IL App (1st) 140638-U

FIRST DIVISION
DECEMBER 14, 2015

No. 1-14-0638



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| *In re* the Marriage of | ) | Appeal from the |
| | ) | Circuit Court of |
| HEIDI LEVY STONE, | ) | Cook County. |
| | ) | |
| Petitioner-Appellee, | ) | |
| | ) | No. 11 D 1920 |
| v. | ) | |
| | ) | |
| ADAM J. STONE, | ) | Honorable |
| | ) | Dominique C. Ross, |
| Respondent-Appellant. | ) | Judge Presiding. |

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JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Liu and Justice Connors concurred in the judgment.

**ORDER**

¶ 1 *Held*: Circuit court's finding that former spouses entered into an oral settlement agreement was not against the manifest weight of the evidence and circuit court properly denied former husband's motion to vacate judgment for dissolution of marriage.

¶ 2 This appeal arises from the July 26, 2013 judgment for dissolution of marriage entered by the circuit court of Cook County, which dissolved the marriage between petitioner Heidi Stone (Heidi) and respondent Adam Stone (Adam), and also arises from the circuit court's February 4,

2014 order denying Adam's motion to vacate the judgment for dissolution of marriage. On appeal, Adam appeals the financial portions of the judgment for dissolution of marriage, arguing that the circuit court erred in ruling that the parties had reached an oral marital settlement agreement. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3 BACKGROUND

¶ 4 On February 28, 2011, Heidi filed a petition for dissolution of marriage after almost 10 years of marriage. The union between Heidi and Adam resulted in one child, Spencer, who was then 8 years old. On March 24, 2011, Adam filed a response and counter-petition for dissolution of marriage. On May 26, 2011, the circuit court entered an agreed order requiring Adam to pay monthly unallocated temporary support to Heidi in the amount of $4,200.

¶ 5 In 2011, the parties attended mediation and, as a result, they entered into a joint parenting agreement resolving all child-related issues. The joint parenting agreement was then incorporated into an agreed custody judgment entered by the circuit court on November 18, 2011. On December 18, 2012, because the parties were unable to resolve their financial issues, the circuit court set the case for trial to commence on May 23, 2013.

¶ 6 On May 23, 2013, the circuit court entered an order setting the case for trial before Judge Dominique Ross, who, on May 24, 2013, entered an order setting the case for trial on June 3, 4, 7, 14, and 20.

¶ 7 On June 3, 2013, trial commenced and the court heard partial testimony from Adam.[1] On that day, the circuit court also entered an order modifying the remaining trial dates. On June 4,

[1] Heidi's brief states that on June 3, 2013, the circuit court heard partial testimony from Adam. Adam's brief states that trial commenced on May 24, 2013. No transcript of the June 3,

2013, although trial had commenced, the circuit court conducted a "pretrial" conference and settlement negotiations took place between the parties, their counsel, and Judge Ross. The circuit court then entered an order continuing the case for further pretrial conference on June 6, 2013.

¶ 8 On June 6, 2013, the circuit court made various settlement recommendations and the parties' attorneys were instructed to e-mail the court if the parties come to an agreement. No order was entered by the court on that day.

¶ 9 On June 11, 2013, counsel for both parties separately e-mailed Judge Ross indicating that their respective clients "accept[ed]" the court's pretrial recommendations. In the e-mail sent by Heidi's counsel, she indicated that her notes reflected the following: (1) $1.5 million in assets awarded to Heidi, with $950,000 in assets awarded to Heidi immediately comprising of the house ($600,000); retirement accounts ($250,000); cash and equivalent accounts (the remaining balance that would bring the total to $950,000); and the balance of $550,000 due and owing to Heidi would be payable by Adam "over a period of seven (7) years, at a reasonable interest rate, as non-taxable maintenance in gross"; and (2) Adam would pay to Heidi monthly child support of $2,000 or 20% of his net income, whichever is greater. Likewise, in the e-mail sent by Adam's counsel, he thanked Judge Ross for her "assistance and recommendations for resolving this matter" and indicated that his notes reflected the following: (1) $1.5 million in assets awarded to Heidi, with $950,000 in assets awarded to Heidi immediately comprising of the house ($600,000); retirement accounts ($250,000); liquid investments ($100,000); the balance of $550,000 due and owing to Heidi would be payable by Adam "over a period of seven (7) years,

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2013 proceedings is provided in the record before us. However, because Judge Ross' May 24, 2013 order set trial to commence on June 3, 2013, we find Heidi's chronology of the events to be reasonable.

at a reasonable interest rate. The amount would be a non-dischargeable judgment in favor of Heidi. The amount would be a balloon payment"; Adam would receive all other assets; and each party to pay their own debts and liabilities; (2) Adam would pay to Heidi monthly child support of $2,000 or 20% of his net income, whichever is greater; (3) each party would be waiving maintenance; (4) each party would be responsible for their own attorney fees and costs; and (5) each party would be responsible for their own health insurance costs.

¶ 10 Later that same day, Heidi's counsel e-mailed Judge Ross a second time, noting that there was a discrepancy regarding what each party believed to be the timing of the payout of the $550,000 owed to Heidi—that is, whether it would be paid throughout the next 7 years or whether it would be paid as one lump sum payment occurring after 7 years have lapsed—and asking the court to clarify the issue at the next scheduled trial date of June 13, 2013. On June 12, 2013, Judge Ross responded to both counsel by e-mail, saying "[e]xcellent. Thank you all."

¶ 11 On June 13, 2013, counsel for the parties appeared before the circuit court, which resolved the timing issue regarding the payout of the $550,000 in favor of Adam. The payout would be made as a lump sum to Heidi at the end of the 7-year period with a 3% interest rate. Heidi's counsel accepted the court's recommendation. On that same day, the circuit court entered an order striking the remaining trial dates, setting the case for "prove-up" on June 28, 2013, and ordering Adam to provide a court reporter at the prove-up hearing.

¶ 12 On June 28, 2013, the circuit court entered an agreed order continuing the case for prove-up on July 22, 2013, and again ordering Adam to provide a court reporter at the prove-up hearing. No transcript of the June 28, 2013 proceedings exists because no court reporter was present.

¶ 13 On July 16, 2013, Heidi filed a petition for rule to show cause, arguing that Adam should show cause as to why he should not be held in indirect civil contempt of court for failing to pay Heidi's unallocated temporary support for the month of July 2013, as required by the terms of the May 26, 2011 agreed order. Attached to the petition were private e-mail exchanges between Heidi and Adam purporting to show that Adam refused to pay Heidi temporary support in July 2013 on the basis that there was "an accepted settlement in place with the court."

¶ 14 On July 22, 2013, prove-up did not proceed and no transcript of the proceedings exists because as noted by Heidi, Adam did not provide a court reporter. According to Heidi, as of July 22, 2013, there were still unresolved language issues with portions of the marital settlement agreement that was being drafted by counsel, and the parties and their counsel discussed their disagreements with Judge Ross, who resolved "any and all disputed language." On that same day, the circuit court entered an order continuing the case for prove-up on July 26, 2013, and again requiring Adam to provide a court reporter.

¶ 15 Counsel for the parties later made additional revisions to the draft marital settlement agreement. On the afternoon of July 22, 2013, Adam's counsel e-mailed a redlined draft of the marital settlement agreement to Heidi's counsel and Adam, stating the following:

> "I did my best from my notes from today to make the adjustments. There were some other nits and nats that were adjusted, but all is red-lined for discussion. I am sending to Adam and [Heidi's counsel] at the same time in order to expedite the process. However, everyone should understand that we are all reviewing with the intention of making adjustments for entry on Friday. Adam is to provide the list of property he wants from the Home.

> Heidi is to provide her intention as to filing jointly or not. This draft has both options so that we can delete one. As Adam is traveling on Friday and not available for last minute changes, we should keep timing in mind, as the Judge has indicated her intentions on Friday absent entry of the Judgment."

¶ 16 On July 24, 2013, counsel for the parties further exchanged e-mails regarding final revisions to the marital settlement agreement, including Heidi's decision to file her taxes separately and the list of property that Adam wished to remove from the marital residence.

¶ 17 On July 25, 2013, on the eve of the prove-up hearing, Adam's counsel, Attorney Steve Klein (Attorney Klein), filed a motion for leave of court to withdraw his appearance (motion to withdraw), citing irreconcilable differences and communication difficulties between attorney and client. On that same day, in response to the motion to withdraw, Heidi's counsel filed an emergency motion to enforce the settlement agreement (emergency motion to enforce), with an attached affidavit from Heidi's counsel, arguing that both parties had accepted the court's settlement recommendations on June 11, 2013, thereby reaching a settlement agreement; that all remaining issues with regard to the language in the marital settlement agreement were resolved with the help of the court on July 22, 2013; that prove-up was ultimately set for July 26, 2013; that the marital settlement agreement had been circulated between Heidi's counsel and Adam's counsel; that it had already been signed by Heidi; that Adam refuses to execute the marital settlement agreement; and that the court should enforce the oral settlement agreement that the parties had reached. The emergency motion to enforce was noticed to be heard on the following day, July 26, 2013.

¶ 18 On July 26, 2013, counsel for the parties appeared before the circuit court. Adam did not personally appear nor did he provide a court reporter for the proceedings. The circuit court entered a judgment for dissolution of marriage, which incorporated the marital settlement agreement signed by Heidi. The circuit court also entered the following separate order:

> "The issue of personal property will stay before Judge Ross and is set for status on September 24, 2013, *** and therefore Exhibit C from the [marital settlement agreement] was intentionally omitted; Judgment is entered today on the court's previous prove up on grounds, trial had commenced, and the court finding that the parties had an enforceable oral agreement. This judgment is being entered over Adam Stone's counsel's objection, notwithstanding the numerous court dates granted to finalize the written document. The emergency motion [to enforce] and the motion to withdraw are withdrawn."

¶ 19 On August 13, 2013, Attorney Todd Feiwell (Attorney Feiwell) filed an additional appearance as counsel for Adam. Thereafter, Attorney Klein filed a second motion for leave of court to withdraw his appearance (second motion to withdraw).

¶ 20 On August 23, 2013, Adam's new counsel, Attorney Feiwell, filed a motion to vacate the July 26, 2013 judgment for dissolution of marriage and the separate court order, to which Heidi filed a response on September 10, 2013.

¶ 21 On October 10, 2013, a hearing on Adam's motion to vacate was held during which counsel for each party made arguments. On February 4, 2014, the circuit court denied Adam's motion to vacate, finding that the parties had entered into a valid and enforceable oral settlement

agreement, that the case was settled, and that trial was terminated "based on said oral agreement." The circuit court specifically noted that it would not have stopped the trial had there not been an agreement between the parties, and that it would not vacate the judgment because Adam "changed his mind" and wanted to back out of the oral settlement agreement.

¶ 22 On February 25, 2014, Adam filed a timely notice of appeal, appealing the financial portions of the July 26, 2013 judgment for dissolution of marriage and the separate order, as well as the court's February 4, 2014 ruling denying his motion to vacate. Accordingly, we have jurisdiction over this appeal.

¶ 23 ANALYSIS

¶ 24 The relevant inquiry before us is whether the circuit court erred in finding that the parties entered into a valid and enforceable oral settlement agreement such that the July 26, 2013 decision should be overturned.

¶ 25 Adam appeals the financial portions of the circuit court's July 26, 2013 judgment for dissolution of marriage, not the portion dissolving his and Heidi's marriage. As a preliminary matter, he acknowledges that this court has jurisdiction over the appeal, but claims that because Heidi's emergency motion to enforce had been withdrawn by July 26, 2013, there was "nothing before the [c]ourt" and the circuit court had no authority to *sua sponte* enter the July 26, 2013 judgment based on the written marital settlement agreement that was only signed by Heidi.

¶ 26 Heidi counters that the circuit court had both jurisdiction and authority to enter the July 26, 2013 judgment for dissolution of marriage, notwithstanding the withdrawal of her emergency motion to enforce the settlement agreement. Heidi argues that Adam misapprehends the distinction between motions and pleadings, pointing out that despite the withdrawal of the emergency motion to enforce, there was an underlying *pleading*—her February 2011 petition for

dissolution of marriage—requesting the relief that the circuit court ultimately awarded under the judgment for dissolution of marriage and also framed all of the property-related issues before the court. Thus, she contends, the judgment for dissolution of marriage did not exceed the scope of the relief requested in the pleadings before the trial court, and the court was well within its authority to enforce the parties' marital settlement agreement. To the extent that Adam argues the trial court lacked jurisdiction, Heidi asserts that argument should also fail because the trial court had both subject matter jurisdiction and *in personam* jurisdiction over the parties.

¶ 27 With limited exceptions, circuit courts have " 'original jurisdiction of all justiciable matters.' " *Ligon v. Williams*, 264 Ill. App. 3d 701, 707 (1994) (quoting Ill. Const. 1970, art. VI, § 9). "The court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition, pleadings that function to frame the issues for the trial court and circumscribed the relief the court is empowered to order." *Suriano v. Lafeber*, 386 Ill. App. 3d 490, 492 (2008). A party cannot be granted relief in the absence of corresponding pleadings; if a justiciable issue is not presented to the court through proper pleadings, the court cannot *sua sponte* adjudicate an issue. *Id.* Orders that are entered in the absence of a justiciable question properly presented to the court by the parties are void since they result from court action exceeding its jurisdiction. *Id.* at 492-93.

¶ 28 We find that the circuit court had proper authority to enter the July 26, 2013 judgment and order regarding the parties' marital settlement agreement. Heidi's February 2011 petition for dissolution of marriage alleged that the parties accumulated marital property during the course of their marriage; that Heidi owned non-marital property which should be assigned to her; that the parties jointly acquired the marital home located at 3116 N. Southport Avenue in Chicago, along with furnishings and other property located therein; and that Adam dissipated marital funds and

concealed marital assets from Heidi. The prayer for relief in the petition for dissolution of marriage specifically asked the court to award Heidi all of her non-marital property, an equitable share of the parties' marital property, and sole possession of the marital residence, as well as requested the court to require Adam to reimburse the marital estate for sums he dissipated during the course of the marriage. Likewise, Adam's counter-petition for dissolution of marriage alleged that the parties had acquired marital assets such as automobiles, furniture and fixtures, and certain financial assets, and alleged that Adam had substantial non-marital property. Adam's counter-petition for dissolution of marriage asked the circuit court to equitably divide the parties' marital property and marital debt, and to award Adam his non-marital property. We find that because both the petition and counter-petition for dissolution of marriage set before the circuit court a justiciable issue for the division of the parties' marital and non-marital property, and defined the relief sought regarding the parties' property and finances, the circuit court had authority to enter the July 26, 2013 judgment and order regarding the parties' marital settlement agreement which disposed of issues pertaining to the parties' property.

¶ 29 In so finding, we reject Adam's cited authority, as none of those cases concerned a finding by this court that the circuit court lacked authority to enter a judgment despite the existence of an underlying pleading—such as the parties' petition and counter-petition for dissolution of marriage in this case—framing the issues for the circuit court and requesting relief that the circuit court ultimately addressed in the judgment. See *Ligon*, 264 Ill. App. 3d 701; *Suriano*, 386 Ill. App. 3d 493; *In re Marriage of Gowdy*, 352 Ill. App. 3d 301 (2004); *In re Chilean D.*, 304 Ill. App. 3d 580 (1999); *Tucker v. Board of Trustees of the Police Pension Fund of the Village of Park Forest, Illinois*, 376 Ill. App. 3d 983 (2007). Thus, we find that, despite

the withdrawal of Heidi's emergency motion to enforce the settlement agreement, the circuit court had proper authority to enter its judgment on July 26, 2013.

¶ 30 Nevertheless, Adam argues in his reply brief that Heidi's petition for dissolution of marriage "was not set for trial on the date in question," and that in order for Heidi to obtain the relief requested in her petition there would have to have been a contested trial. However, this argument ignores the fact that the law favors the settlement of property rights in cases of marital dissolution. See *In re Marriage of Lakin*, 278 Ill. App. 3d 135, 139 (1996). Moreover, we disagree with Adam's argument because it seems to suggest that even when parties have come to a mutual agreement, the parties are required to file motions, before the circuit court has any ability to proceed with prove-up or finalize any settlement agreements. As noted, in the case at bar, a prove-up hearing was already scheduled to be held on July 26, 2015, *before* Adam's counsel, Attorney Klein, filed a motion to withdraw to which Heidi responded by the filing of the emergency motion to enforce the settlement agreement.

¶ 31 Adam further makes various arguments that the filing of a motion was crucial to providing the circuit court with the power to enter the July 26, 2013 judgment, and cites *Kollath v. Chicago Title & Trust Co.*, 62 Ill. 2d 8 (1975), *Ruttenberg v. Red Plastic Company, Inc.*, 68 Ill. App. 3d 728 (1979), and *Zygmuntowicz v. Pepper Construction Co.*, 306 Ill. App. 3d 182 (1999), for support. However, none of these cases help advance his position, where they pertain to a finding that the circuit court lacked jurisdiction to rule on either a postjudgment motion due to the untimely filing of a motion to vacate judgment (*Kollath* and *Ruttenberg*), or an issue that was never raised by a formal pleading (*Zygmuntowicz*). Adam also makes various arguments for the first time in his reply brief regarding due process violations and the necessity of an evidentiary hearing, which we find to be forfeited for review. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)

("[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing"). Therefore, despite the withdrawal of Heidi's emergency motion to enforce the settlement agreement, we find that the circuit court did not lack authority to enter the July 26, 2013 judgment and order regarding the parties' marital settlement agreement.

¶ 32 As another preliminary matter, Adam argues that the "nature of the action" section of Heidi's brief on appeal violates Illinois Supreme Court Rule 341(h)(2) (eff. July 1, 2008), as it contains improper argumentative statements and should be stricken. We disagree that it contains argumentative statements and thus reject Adam's argument on this basis.

¶ 33 Turning to the merits of the appeal, we examine whether the circuit court erred in finding that the parties entered into a valid and enforceable oral settlement agreement such that the July 26, 2013 judgment should be overturned. "When presented with a challenge to a trial court's determination that parties reached an oral settlement agreement, a reviewing court will not overturn that finding unless it is against the manifest weight of the evidence." *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 312 (2009). "A finding regarding the validity of a settlement agreement is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent or where a decision is palpably erroneous and wholly unwarranted." *Id.*; *Kay v. Prolix Packaging, Inc.*, 2013 IL App (1st) 112455, ¶ 55 (whether a contract exists between the parties, the parties' intent in forming it, and the contract's terms are all questions of fact to be determined by the trier of fact, which are afforded deference by a reviewing court unless they are against the manifest weight of the evidence). It is not enough to show that there is sufficient evidence to support a contrary judgment. *Ceres Illinois, Inc. v. Illinois Scrap Processing, Inc.*, 114 Ill. 2d 133, 142 (1986). Further, a circuit court's denial of a

motion to vacate a judgment of dissolution of marriage will not be disturbed on appeal absent an abuse of discretion. *In re Marriage of Melton*, 93 Ill. App. 3d 338, 343 (1981).

¶ 34 Adam argues that the circuit court erred in finding that the parties entered into a valid and enforceable oral settlement agreement, where there was no meeting of the minds by the parties based on the June 11, 2013 e-mails sent by both parties' counsel to Judge Ross and, thus, he claims that no agreement was formed at that time. He further argues that various recitals in the judgment for dissolution of marriage, which incorporated the purported written marital settlement agreement that was only signed by Heidi, were not agreed upon by Adam. Adam points out that he never signed the purported written marital settlement agreement, which he claims contained terms regarding the parties' assets that were not mentioned in the June 11, 2013 e-mails, and that the purported written marital settlement was "otherwise inconsistent" with the content of his counsel's e-mail. Adam also claims that no prove-up hearing was ever held to support any alleged oral settlement agreements.

¶ 35 Heidi contends that the circuit court's determination that a valid and enforceable settlement agreement existed between Adam and Heidi was supported by the manifest weight of the evidence. She first points out that Adam's failure to provide a court reporter at the July 22, 2013 and July 26, 2013 proceedings, as required by the trial court, entitles Heidi to a presumption that the court's July 26, 2013 order finding that the parties had an enforceable oral settlement agreement was correct and entered in conformity with the law. Heidi further argues that an enforceable oral settlement agreement containing essential terms was formed when, following the pretrial conference, counsel for both parties exchanged e-mails with Judge Ross on June 11, 2013 indicating that each party accepted the court's settlement recommendations on all essential terms. She specifically argues that because Judge Ross was involved in the pretrial

settlement negotiations, Judge Ross' recollections and findings that the parties reached an agreement was sufficient to ensure that a contract was indeed made. Heidi contends that although other nonessential terms were left open at the time the parties reached the settlement agreement, that did not nullify the agreement or demonstrate that the parties lacked a "meeting of the minds."

¶ 36 Section 502(a) of the Illinois Marriage and Dissolution of Marriage Act (the Marriage Act) provides that in order to promote amicable settlement of disputes upon the dissolution of marriage, parties "may enter into a written or oral agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them and support, custody and visitation of their children." 750 ILCS 5/502(a) (West 2012).

¶ 37 A settlement agreement is 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 (5th) 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 (5th) 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 (5th) 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).

¶ 38 Heidi initially argues that Adam's failure, as the appellant, to provide a court reporter at the July 22, 2013 and July 26, 2013 proceedings, as specifically required by the circuit court, entitles her to a presumption that the court's July 26, 2013 ruling that the parties had an enforceable oral settlement agreement was correct and entered in conformity with the law. "It is a basic principle of appellate review that an appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error." *In re Marriage of David*, 367 Ill. App. 3d 908, 918 (2006). In the absence of a complete record on appeal, it will be presumed that the order entered by the circuit court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Any doubts which may arise from the incompleteness of the record will be resolved against the appellant. *Id.* The sufficiency of the record to address a claim of error turns on the question presented on appeal. *K4 Enterprises, Inc.*, 394 Ill. App. 3d at 313. In *Foutch*, the question was whether the trial court abused its discretion in denying the motion to vacate an *ex parte* judgment. *Foutch*, 99 Ill. 2d at 391-92. Absent a transcript of the hearing on the motion to vacate where evidence was heard, review of the trial court's denial of the motion, where no specific grounds for the denial were given, was foreclosed. *Id.* at 392. In the instant case, however, the issue raised by Adam is whether the parties had reached an enforceable oral settlement agreement. Although Adam

failed to provide a court reporter for the July 22, 2013 and July 26, 2013 proceedings despite multiple requests by the circuit court, we find that the record here is sufficiently complete to address the merits of the appeal.

¶ 39 We now turn to the primary question raised before us: whether the circuit court's finding that the parties entered into a valid and enforceable oral settlement agreement was against the manifest weight of the evidence. Although no transcript of the July 26, 2013 proceedings is available for review, we do have before us a transcript of the October 10, 2013 hearing on the motion to vacate, which we find helpful. At the October 10, 2013 hearing, in response to arguments by Adam's new counsel, Attorney Feiwell, that there was no oral settlement agreement between the parties, Judge Ross stated, "you know I was there, right?" Judge Ross further recalled that because she was unavailable to be in court on June 11, 2013, she had instructed the parties' counsel that "if they came to a resolution to send me an e-mail, and that is what they did." Judge Ross further found that Adam did agree to the oral settlement agreement, but that he "decided not to show up on the day of the finalization." Judge Ross remarked that on July 26, 2013, in the absence of Adam, who did not personally appear in court, "there was an oral prove-up based upon the agreement of the parties." At the February 4, 2014 hearing, the trial court denied the motion to vacate by making the following oral findings:

> "As to the motion to vacate, the motion to vacate is denied. The Court finds that there was an oral agreement between the parties. The case settled. We were set for trial. The trial had commenced and was terminated based on the statements that the parties have entered into an oral agreement. They were supposed to come back and do a prove-up, and basically what happened was

> [Adam] changed his mind. And you cannot back out of an oral agreement. So simply because there was no written document at the time does not negate the fact that there was an agreement to settle this matter. The trial had commenced. It stopped based on the representations from both parties that they had entered into an agreement. And that agreement was stated before this Court as to what it was. I would never have stopped that trial had there not been [an] agreement. And I'm not going to vacate it because he went home, decided that he just was not going to show up to court when there was an order for him to come to court to prove up the case, and he just decided he had something better to do. And I am not going to vacate it."

The record also reveals that on June 4, 2013, the circuit court conducted a pretrial conference and settlement negotiations took place between the parties, their counsel, and Judge Ross. On June 6, 2013, the trial court made various settlement recommendations and instructed the parties' attorneys to e-mail the court if the parties came to an agreement. On June 11, 2013, counsel for both parties separately e-mailed Judge Ross indicating that their respective clients "accept[ed]" the court's pretrial recommendations, which resolved the essential terms of the $1.5 million assets awarded to Heidi. Each counsel's e-mail reflected the same breakdown of the $1.5 million, which was comprised of the house, retirement accounts, and liquid investments. Counsel for Adam specifically thanked Judge Ross for her "assistance and recommendations for resolving this matter." Although Heidi's counsel e-mailed Judge Ross a second time on June 11, 2013, asking for clarification on whether $550,000 of the $1.5 million owed to Heidi should be

paid by Adam throughout the next 7 years or as one lump sum payment occurring after 7 years have lapsed, the circuit court clarified during the following hearing on June 13, 2013 that payment should be made as a lump sum at the end of the 7-year period with a low interest rate. Heidi's counsel then accepted the court's recommendation, and the circuit court struck the remaining trial dates and set the case for "prove-up." Thereafter, counsel for the parties drafted a written marital settlement agreement reflecting the essential terms of the June 11, 2013 e-mails. The record further shows that as of July 22, 2013, the parties and their counsel discussed certain unresolved language issues in portions of the draft marital settlement agreement, all of which Judge Ross resolved and continued the case for prove-up on July 26, 2013. This is evidenced by an e-mail from Adam's counsel to Heidi's counsel and Adam later that day on July 22, 2013, in which Adam's counsel remarked that he made some "nits and nats" redlined adjustments to the draft marital settlement agreement based on his notes from that day in court, and reminded both Heidi's counsel and Adam that "everyone should understand that we are all reviewing with the intention of making adjustments for [the court's] entry [of judgment] on Friday. Adam is to provide the list of property he wants from the home. Heidi is to provide her intention as to filing jointly or not. This draft has both options so that we can delete one." On July 24, 2013, counsel for the parties further exchanged e-mails regarding final revisions to the marital settlement agreement, including Heidi's decision to file her taxes separately and the list of property that Adam wished to remove from the marital residence.

¶ 40 Based on the foregoing, we find that the evidence supports the circuit court's conclusion that the parties had reached an enforceable oral settlement agreement, where counsel for the parties recited the essential terms of the parties' settlement agreement in the June 11, 2013 e-mails to Judge Ross and both counsel indicated that they accepted the recommendations made by

Judge Ross during settlement negotiations on June 6, 2013. Because the parties' settlement negotiations were conducted before Judge Ross during pretrial conference on June 6, 2013, and the parties thereafter accepted those terms in the June 11, 2013 e-mails, we find that there can be no danger of enforcement of a contract that was never made. Judge Ross, who was present during negotiations, was in a position to resolve any disputes as to whether an agreement was in fact reached and her presence was sufficient to ensure that the parties reached an oral settlement agreement. See *Rose*, 343 Ill. App. 3d at 1097 ("[w]hen parties reach a settlement during a court-mandated settlement conference conducted in the judge's chambers and state the terms of that agreement in the judge's presence, there is no danger of enforcement of a contract which was, in fact, never made. This is so even if no transcript or written order memorializing the agreement is prepared on the date the agreement is reached. The possibility of fraud is negated in that the trial judge *** resolves any disputes as to whether an agreement was in fact reached or the content of that agreement"). The totality and progression of the aforementioned events, including the July 22, 2013 and July 24, 2013 e-mails from Adam's counsel to Heidi's counsel, indicates that after the parties reached an oral settlement agreement, Adam's counsel was actively engaged in finalizing the written marital settlement agreement and in hashing out minute details with Heidi's counsel in the days leading up to the circuit court's entry of judgment on July 26, 2013. It is clear from the record that the parties had a meeting of the minds in entering into the oral settlement agreement on June 11, 2013, with each party assenting to the same things in the same sense on the essential terms and conditions of the $1.5 million assets.[2] The marital

[2] Heidi points to a July 8, 2013 e-mail sent by Adam's counsel to her counsel, as further evidence that Adam had entered into a settlement agreement with her. However, during the October 10, 2013 hearing on the motion to vacate, the circuit court sustained Adam's counsel's objection to admitting the July 8, 2013 e-mail as evidence. Accordingly, the July 8, 2013 e-mail

settlement agreement, which was subsequently drafted, simply memorialized the parties' previous enforceable oral agreement and spelled out other nonessential details regarding the parties' property. See *Haller*, 2012 IL App (5th) 110478, ¶ 50 (an oral settlement agreement need not be reduced to writing to make it valid and binding). Moreover, we note that at the hearing on the motion to vacate, Adam's new counsel, Attorney Feiwell, argued that Adam, "like any party has a right to change their mind." However, a party's change of heart does not affect the enforceability of a binding oral settlement agreement, as "a court should not set aside a property settlement agreement merely because one party has second thoughts." *In re Marriage of Baecker*, 2012 IL App (3d) 110660, ¶ 32.

¶ 41 Adam quotes verbatim several lengthy provisions of the written marital settlement agreement (Article I, Section G; Article III, Sections B, E and F; Article XI, Section A; Article XII, Sections A and B; Article XIII, Section A; Article XIV, Section A), arguing that these provisions were "inconsistent" with the provisions in the attorneys' July 11, 2013 e-mails. Our review of these provisions show that they pertain to the consequences of nondisclosure of material marital financial assets by a party; the transfer of title of the Land Rover automobile to Heidi; the division of assets from the sale of the parties' Thailand property and boat; the division of funds from a repayment of a loan made by Adam to his company, Stone Lighting; the maintenance of life insurance policies for the benefit of Heidi and Spencer; the maintenance of health insurance for Spencer; the division of responsibility by each party to pay Spencer's unreimbursed medical expenses and other costs for extracurricular activities; and the issue of attorney's fees. Aside from quoting these provisions verbatim, we find that Adam's opening brief

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was not a basis for the circuit court's decision to deny the motion to vacate and, likewise, we will not consider it as proper evidence before us.

fails to specifically identify or flesh out in more detail what "inconsistencies" exist between these cited provisions and counsels' July 11, 2013 e-mails, in which the parties agreed to accept the court's settlement recommendations regarding the $1.5 million in assets to Heidi. Any confusion between the parties as to the timing of the payout of the $550,000 owed to Heidi was resolved by the trial court in favor of Adam on June 13, 2013, which Heidi's counsel accepted. Adam further argues, without specifying which ones, that there are also provisions in the written marital settlement agreement that were not contained in the June 11, 2013 e-mails. To the extent that there are additional terms that were not reflected in the June 11, 2013 e-mail exchanges, the record supports the conclusion that they were agreed to by the parties in the presence of Judge Ross on July 22, 2013, when she resolved all of the parties' language disputes in the draft marital settlement agreement and continued the case for prove-up on July 26, 2013. Further, to the extent that Adam argues that the trial court's July 26, 2013 order "reserved" the issue of personal property, which he somehow claims differed from the content of counsels' June 11, 2013 e-mails, we also reject this contention. The trial court's July 26, 2013 order states that "the issue of personal property will stay with Judge Ross and is set for status on September 24, 2013, *** and therefore Exhibit C from the [marital settlement agreement] was intentionally omitted." The record shows that Exhibit C pertained only to the list of personal property that Adam wished to remove from the home, which he had yet to provide at the time of the entry of the July 26, 2013 judgment. Adam does not argue that these additional provisions, or the list of personal property, were *essential* terms to the parties' agreement.[3] See *Rose*, 343 Ill. App. 3d at 1091 (the lack of

[3] During the October 10, 2013 hearing on the motion to vacate, the circuit court noted to Adam's counsel that, "you keep bringing up the issue of Thailand. I recall very vividly that the Thailand property had no buyer, so, of course, we'll sell it, whatever. It was like it's under water. Throw it up – you know, nobody cared about Thailand. We'll sell it because the implication was

nonessential details will not render a contract unenforceable); *Pritchett v. Asbestos Claim Management Corp.*, 332 Ill. App. 3d 890, 897 (2002) ("[e]very feasible contingency that might arise in the future need not be provided for in a contract for the agreement to be enforceable"). Thus, Adam's arguments cannot stand on this basis.

¶ 42 Relying primarily on *In re Marriage of Chaltin*, 153 Ill. App. 3d 810 (1987), *In re Marriage of Lakin*, 278 Ill. App. 3d 135, and *Crawford v. Crawford*, 39 Ill. App. 3d 457 (1976), Adam argues that the parties did not reach an oral settlement agreement. However, we find those cases to be distinguishable, where, unlike Adam here, the oral consent in those cases were challenged by one spouse before a final decree or judgment had been entered. Here, Adam failed to object to the terms of the oral settlement agreement *before* the entry of the July 26, 2013 judgment of dissolution of marriage incorporating the marital settlement agreement. As discussed, counsel for Adam was actively engaged in finalizing the details of the marital settlement agreement with Heidi's counsel in the days leading up to the entry of the July 26, 2013 judgment. Rather, Adam waited until *after* the entry of the July 26, 2013 to file, by new counsel, a motion to vacate the judgment claiming that he never agreed to the terms of the settlement agreement. Adam points to the trial court's July 26, 2013 order finding that the parties had an enforceable oral settlement agreement, in which the court expressly stated that "[t]his judgment is being entered over Adam Stone's counsel's objection, notwithstanding the numerous court dates granted to finalize the written document," as evidence that he *did* object to the agreement before entry of the judgment. However, the trial court clarified during the October 10, 2013 hearing on the motion to vacate that the objection at issue pertained only to counsel's request that

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that good luck selling it because there was nobody to buy it, so there was agreement on Thailand. I remember it very specifically."

judgment be entered on a different date when Adam could be present in court, and that no objection to the settlement agreement was ever raised prior to the entry of the July 26, 2013 judgment. Because no transcript of the July 26, 2013 proceedings exists, as a result of Adam's failure to provide a court reporter as instructed by the trial court, there is no basis upon which to contradict the trial court's stated recollection regarding the nature of counsel's objection during the proceedings. See *Foutch*, 99 Ill. 2d at 392 (in the absence of a complete record on appeal, it will be presumed that the order entered by the circuit 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). Thus, Adam's argument on this basis must fail.

¶ 43 Likewise, we reject Adam's claim that he was "left without an attorney" during the July 26, 2013 proceedings because his counsel, Attorney Klein, had filed a motion to withdraw on the day before the proceedings. However, the record clearly shows that the motion to withdraw was withdrawn and the July 26, 2013 order entered by the circuit court specified that "counsel for the parties [were] present." We further reject Adam's unsupported claim that there was no "prove-up" under oath and, thus, there can be no oral settlement agreement. The record shows that as of June 13, 2013, the trial court set the case for a prove-up hearing which was subsequently continued a few times and eventually scheduled for July 26, 2013. At the October 10, 2013 hearing on the motion to vacate, the trial court recalled the circumstances surrounding the prove-up and stated:

> "[i]t had informed everyone on the prior court date that the agreement was going to be entered, and the reason that the prove-up went forward was because you only needed to have one witness to do the prove-up. [Adam] elected not to show up. There was

> never a conversation or a statement that there was an objection to the agreement. *** There was an oral prove-up with your client not there. That is what took place. There was an oral prove-up based upon the agreement of the parties."

As noted, because no transcript of the July 26, 2013 proceedings exists, as a result of Adam's failure to provide a court reporter as instructed by the trial court, we have no basis to overturn the trial court's recollection that a prove-up hearing proceeded on that day with only one witness (presumably, Heidi). See *Foutch*, 99 Ill. 2d at 392 (any doubts which may arise from the incompleteness of the record will be resolved against the appellant). To the extent that no proper prove-up was held as a result of Adam's absence during the July 26, 2013 proceedings, we find that Adam cannot now complain of such alleged error where his own conduct in choosing not to attend the prove-up hearing, invited the error. See *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004) (party cannot complain of error which that party has induced or invited). Thus, we find Adam's arguments to be without merit.

¶ 44 Adam further argues that the trial court in the case at bar failed to consider the economic circumstances of the parties and other relevant evidence, as required by section 502(b) of the Marriage Act, before making "determinations" regarding the proposed settlement agreement. We reject this contention. Section 502(b) provides that "[t]he terms of the agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, *on their own motion or on request of the court*, that the agreement is unconscionable." (Emphasis added.) 750 ILCS 5/502(b) (West 2012). Nothing in the record shows that Adam filed any motions before the court purporting to challenge the

reasonableness of the oral settlement prior to the entry of judgment on July 26, 2013. Neither his motion to vacate the July 26, 2013 judgment, nor his opening brief on appeal, alleged that the agreement was unconscionable. Absent a transcript of the July 26, 2013 proceedings, we must presume the trial court considered the parties' economic circumstances and any other relevant evidence, and found the oral settlement agreement to be reasonable and not unconscionable before entering both the July 26, 2013 judgment for dissolution of marriage and the separate order. See *Cavitt v. Repel*, 2015 IL App (1st) 133382, ¶ 64 (the circuit court is presumed to know the law and apply it properly).

¶ 45 In his reply brief, Adam makes several arguments for the first time, claiming that the trial court had violated certain circuit court of Cook County rules—including Rules 13.2, 13.4 and 13.5 (Cook Co. Cir. Ct. Rs. 13.2, 13.4, 13.5). We find those arguments to be forfeited for review. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing").

¶ 46 Adam also argues that Heidi failed to establish that his original counsel, Attorney Klein, had Adam's express authority to settle the case on his behalf. The authority of an attorney to represent a client in litigation is separate from and does not involve the authority to compromise or settle the lawsuit. *Brewer v. Nat'l R.R. Passenger Corp.*, 165 Ill. 2d 100, 105 (1995). An attorney who represents a client in litigation has no authority to compromise, consent to a judgment against the client, or give up or waive any right of the client. *Id.* Rather, the attorney must receive the client's express authorization to do so. *Id.* Where a settlement is made out of court and is not made a part of the judgment, the client will not be bound by the agreement without proof of express authority. *Id.* This authority will not be presumed and the burden of proof rests on the party alleging authority to show that fact. *Id.* However, while an attorney's

authority to settle must be expressly conferred, "the existence of the attorney of record's authority to settle in open court is presumed *unless rebutted by affirmative evidence that authority is lacking*." (Emphasis in original.) (Internal quotation marks omitted.) *Id.* (quoting *Szymkowski v. Szymkowski*, 104 Ill. App. 3d 630, 633 (1982)). Based on the facts before us, we find that Attorney Klein had the authority to settle the case on behalf of Adam. The record shows that although trial had already commenced, the trial court, on June 4, 2013, conducted a "pretrial" conference and settlement negotiations took place between the parties, their respective counsel, and the trial judge, Judge Ross. The settlement negotiations were continued until June 6, 2013, at which date Judge Ross made various settlement recommendations and the parties' attorneys were instructed to e-mail the court if the parties came to an agreement. Thereafter, on June 11, 2013, counsel for both parties separately e-mailed Judge Ross accepting the court's settlement recommendations. Opposing counsel was copied on all of the e-mails that were sent to Judge Ross. Based on the progression of these events, particularly the fact that Attorney Klein engaged in settlement negotiations in the *presence* of his client, Adam, and Judge Ross together on June 4,[4] we conclude that there exists the presumption that Attorney Klein had the authority to settle the case before Judge Ross, to reduce the oral settlement agreement to writing thereafter, and to finalize all nonessential details of the agreement with opposing counsel leading up to the entry of judgment on July 26, 2013. Adam makes self-serving assertions claiming that he never gave Attorney Klein authority to settle the case on his behalf,[5] but fails to rebut that presumption by

[4] It is unclear whether either Adam or Heidi was also present for the June 6, 2013 settlement negotiations.

[5] To the extent that Adam points to Attorney Klein's July 25, 2013 motion to withdraw as evidence that he and counsel were "clearly in a conflict situation," we reject this contention as the motion to withdraw was withdrawn a day later and was never ruled upon by the circuit court. Thus, arguments relating to the motion to withdraw are not properly before this court.

not providing any affirmative evidence that authority was lacking. Thus, we conclude that Adam's arguments on this basis cannot stand.

¶ 47 Therefore, we hold that the circuit court's finding that the parties entered into an enforceable oral settlement agreement was not against the manifest weight of the evidence, where we cannot conclude that an opposite conclusion is clearly apparent or that the trial court's decision was palpably erroneous and wholly unwarranted. Accordingly, the court properly entered the July 26, 2013 judgment for dissolution for marriage and the court's February 4, 2014 denial of the motion to vacate the judgment for dissolution of marriage was not an abuse of discretion.

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 49 Affirmed.