2012 IL App (2d) 120536-U
No. 2-12-0536
Order filed November 30, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF SCOTT AVERY, Petitioner-Appellant, and M. ANNA EIERMANN, Respondent-Appellee.	))))))))))	Appeal from the Circuit Court of Kane County. No. 08-D-941 Honorable M. Katherine Moran, Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion in classifying and distributing marital property, ordering contribution to attorney fees, and setting child support and maintenance.

¶ 2 The petitioner, Scott Avery, appeals *pro se* certain aspects of the judgment of dissolution entered by the trial court, including the trial court's rulings relating to the marital estate, attorney fees incurred by the respondent, Anna Eiermann, child support, and maintenance. For the following reasons, we affirm.

¶ 3 The parties were married on May 19, 1996, and had one child, Charlotte, who was born on November 12, 2002. In July 2008, Scott filed for dissolution of the marriage. A default judgment of dissolution was entered in November 2008, but Anna successfully moved to vacate most of that judgment, with the exception of the portion finding grounds to dissolve the marriage and the dissolution itself. Scott remarried shortly thereafter.

¶ 4 Following a trial on the remaining issues, the trial court issued a letter opinion containing findings of fact on September 19, 2011. A judgment conforming to that letter opinion was entered on October 17, 2011. In the letter opinion and the judgment, the trial court found that Anna should have sole custody of Charlotte; that Scott should pay $3,000 per month in child support; that Anna should receive $3,000 per month in maintenance, reviewable in 24 months; and that Scott should contribute $6,000 toward Anna's remaining attorney fees. Regarding AlternaDev, a company owned 95% by Scott and 5% by Anna, the trial court found that it was worth approximately $2 million in 2008, at the time of the dissolution. The trial court found that AlternaDev's assets were marital property, the value of which should be divided equally between the parties. Scott filed a motion to reconsider, which the trial court denied. Scott then filed this appeal.

¶ 5 We begin by noting that Scott's brief does not comply with Supreme Court Rule 341 (eff. July 1, 2008), the rule that sets out the required contents of appellate briefs. For instance, Scott provides no statement whatsoever of "the facts necessary to an understanding of the case," as required by Rule 341(h)(6), and provides almost no citations to relevant legal authority or "the pages of the record relied on," as required by Rule 341(h)(7). The supreme court rules governing the content and format of briefs are mandatory. *Voris v. Voris*, 2011 IL App (1st) 103814, ¶ 8. "The fact that a party appears *pro se* does not relieve that party from complying as nearly as possible

[with] the Illinois Supreme Court Rules for practice before this court." *Id*.; see also *In re Marriage of Barile*, 385 Ill. App. 3d 752, 757 (2008). Those rules require an appellant's brief to contain argument supported by citation to authority and to the record. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Thus, although Scott's brief contains a multitude of points, Scott has largely forfeited them by failing to comply with Rule 341.

¶ 6 Moreover, our independent review of the record reveals no basis for finding that the trial court abused its discretion in any of the rulings about which Scott complains. A trial court abuses its discretion only when its ruling is arbitrary, fanciful or unreasonable or where no reasonable person would take the view adopted by the trial court, (*People v. Anderson*, 367 Ill. App. 3d 653, 664 (2006)), or where its ruling rests on an error of law (*Cable America, Inc. v. Pace Electronics, Inc.*, 396 Ill. App. 3d 15, 24 (2009)).

¶ 7 In his appeal, Scott first challenges the trial court's valuation and distribution of certain marital assets. For instance, he asserts that the trial court erred in valuing the AlternaDev checking and money market accounts because the November 2008 statement did not take into account business obligations that were due, including the 2008 tax payment. However, Scott does not provide any cites to the record to support his assertions. A party cannot expect the appellate court to comb the record in search of support for his arguments. *People v. Chatman*, 357 Ill. App. 3d 695, 703 (2005) ("A reviewing court is *** not simply a repository in which appellants may dump the burden of argument and research"). Accordingly, we find this argument forfeited. *Id*. ("an appellant's failure to properly present his own arguments can amount to waiver of those claims on appeal"). We also find Scott's argument relating to a $75,000 payment to Anna forfeited for the same reason.

¶ 8 Scott also argues that the trial court erred in classifying some of the payments relating to the sale of AlternaDev as marital assets. In support, he cites *In re Marriage of Zells*, 143 Ill. 2d 251 (1991), in which the supreme court held that an attorney's unaccrued contingency fee was not a marital asset for several reasons, including that it was speculative whether any fee would be received at all and that any agreement to share that fee with a non-attorney (under a judgment for dissolution) would violate Rule 5.4 of the Illinois Rules of Professional Conduct (Ill. S. Ct. R. 5.4 (eff Aug. 1, 1990)). Neither of those factors are present in this case, where the payments at issue had already been made by the time of the final judgment of dissolution, and thus their value was known. Accordingly, there is no support for this contention of error.

¶ 9 Scott likewise contends that the trial court erred in setting the value of one marital asset, a home located at 916 Royal St. George in Naperville, but the record clearly reflects that the trial court based its valuation on Scott's own statements about the amounts paid to purchase and rehabilitate this home. In addition, Scott argues that the trial court should not have used Anna's estimate of the value of the personal property in the marital home in November 2008, but Scott did not provide any evidentiary support for his own, much higher estimate. Accordingly, he cannot now complain that the trial court chose to accept Anna's estimate. *In re Marriage of Heroy*, 385 Ill. App. 3d 640, 663 (2008) (in a dissolution, both parties bear the burden of providing the trial court with sufficient evidence to evaluate and distribute marital property, and the trial court is responsible for resolving any disputes regarding valuation).

¶ 10 Finally, we take note of the trial court's finding that Scott's testimony relating to the AlternaDev assets was not credible. The weight to be given to the witnesses' testimony, the determination of their credibility, and the reasonable inferences to be drawn from the evidence are

all matters within the jurisdiction of the trier of fact, and we will not retry the case on appeal. *People v. Collins*, 106 Ill. 2d 237, 261-62 (1985). For all of these reasons, we find no error in the trial court's rulings relating to the valuation and distribution of marital property.

¶ 11 Scott next asserts that the trial court abused its discretion in ordering him to pay $6,000 of Anna's attorney fees, because she did not show that she lacked the ability to pay. In support of this assertion, he points out that Anna was awarded $75,000 as an interim distribution in November 2008, and she stated that she had borrowed money from her parents to pay attorney fees. A party need not render herself destitute (nor take out loans) in order to demonstrate an inability to pay, however. See *In re Marriage of Pond and Pomrenke*, 379 Ill. App. 3d 982, 987 (2008). Moreover, the record reflects that the trial court took all of the sources of income to both parties into account in considering Anna's petitions for attorney fees. Finally, to the extent that Scott attempts to raise some other argument with respect to attorney fees, his brief is so unclear that we cannot discern what that argument is, and it is therefore forfeited. Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). We find no abuse of discretion in the allocation of attorney fees.

¶ 12 Scott's final arguments relate to the amount of child support awarded ($3,000 per month) and the award of maintenance (also $3,000 per month, reviewable after 24 months). His main contention is that his income is much lower than the trial court found, and thus he (1) should not have been ordered to pay so much child support, and (2) cannot accommodate the maintenance award. He also contends that Anna had a college degree and could become self-supporting without such maintenance.

¶ 13 The determination of the obligor's income for purposes of child support is within the trial court's discretion, and we will not reverse absent an abuse of that discretion. *In re Marriage of*

Karonis, 296 Ill. App. 3d 86, 92 (1998). Similarly, a trial court's award of maintenance is subject to an abuse-of-discretion standard of review. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005). An abuse of discretion occurs where no reasonable person would take the view of the trial court. *Id*. The party challenging the support award bears the burden of showing such an abuse of discretion. *Id*.

¶ 14 With respect to the child support, Scott argues that it is excessive because his monthly income is only $4,000 in unemployment benefits and rental income, and he also must pay taxes and maintenance from this amount. However, the trial court specifically found that the benefits and rental income that Scott admitted receiving did not comprise all of his income, inasmuch as he continued to enjoy much the same lifestyle he led prior to the dissolution, when he was making more than $400,000 per year. The trial court further found that Scott had deliberately refused to provide more credible and complete information regarding his income. Accordingly, the trial court was forced to assume that Scott's income had not changed appreciably since the entry of the temporary support order in 2008, under which Scott paid $6,100 per month as unallocated support for Anna and Charlotte.

¶ 15 We find no error in this approach. As section 505(h) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/505(h) (West 2010)) provides, where the obligor's net income "cannot be determined ***, the court shall order support in an amount considered reasonable in the particular case." Under these circumstances, it is reasonable for a court to consider the past earnings of a party. *Karonis*, 296 Ill. App. 3d at 92. Moreover, "[t]he credibility and forthrightness of the noncustodial parent in disclosing income is a factor to be considered in accepting evidence of net income." *Id*. For all of these reasons, we find that the trial court did not abuse its discretion in

calculating Scott's income for purposes of setting child support and maintenance. Accordingly, we reject his arguments regarding the amounts of these awards.

¶ 16 We also reject Scott's argument regarding the length of the maintenance award. Scott offers no specifics as to why we should find that the trial court abused its discretion except that he disagrees with its ruling. Moreover, the record shows that Anna has not worked full-time since the parties were married in 1996. We therefore find no abuse of discretion in the 24-month length of the temporary maintenance award, which the trial court will have the opportunity to review in less than a year.

¶ 17 For all of the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 18 Affirmed.