2013 IL App (2d) 121092-U
No. 2-12-1092
Order filed August 5, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF TINKA G. HYDE,	)	Appeal from the Circuit Court
	)	of Kane County.
Petitioner-Appellee,	)	
	)	
and	)	No. 11-D-498
	)	
JOHN E. STONER,	)	Honorable
	)	Robert P. Pilmer,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's rulings that residence purchased by petitioner was nonmarital property, and that she had rebutted the presumption of a gift, was not against the manifest weight of the evidence. We affirmed the judgment of the trial court.

¶ 2 In 2011, petitioner, Tinka G. Hyde, filed for dissolution of marriage in the circuit court of Kane County. In 2012, the trial court dissolved her marriage to respondent, John E. Stoner. As part of the property classification and division, the trial court found the residence inhabited by the parties during the marriage was petitioner's nonmarital property. Additionally, the court ruled that any contribution from the marital estate to petitioner's nonmarital property, *i.e.*, mortgage, insurance,

taxes, and repairs, was *de minimus*, and respondent was not entitled to reimbursement from petitioner's nonmarital estate. Respondent filed a timely notice of appeal and now asks this court to reverse the trial court's ruling that the residence was petitioner's nonmarital property. For the reasons that follow, we affirm.

¶ 3 In respondent's opening brief, he sets out the statement of facts in four sentences:

> "The parties were married on November 25, 2000 ***. On May 30, 2002, [petitioner] purchased the marital real estate ***. On April 7, 2011, [petitioner] filed a petition for Dissolution of Marriage. The trail [*sic*] court entered final judgment thereto on August 3, 2012."

¶ 4 The common-law record reflects that, on August 25, 2011, the trial court conducted hearings on petitioner's motion to list the residence for sale and petitioner's motion to sell the residence. Its written order reflects that it granted the motions to list and to sell the residence but reserved the classification issue of ownership. On July 24, 2012, the trial court granted petitioner's motion to negotiate the real estate contract, and on August 2, 2012, it granted petitioner's motion to accept the contract to sell the residence. The trial court issued its final judgment on August 3, 2012. The court's written order provides that it "heard the testimony of the parties and considered the evidence," and classified the residence as petitioner's nonmarital property.

¶ 5 Respondent contends the trial court erred when it classified the residence as nonmarital, arguing that property acquired during the term of the marriage is presumed marital property. See 750 ILCS 5/503(b)(1) (West 2010). Petitioner counters that the trial court properly classified the residence as nonmarital because she purchased the residence from the funds she received from her nonmarital property. See 750 ILCS 5/503(a) (West 2010).

¶ 6 What makes our review difficult is the failure of respondent to present any transcripts of the proceedings of the relevant hearings. In the present case, our review is undertaken without benefit of direction by respondent to anything in the transcript supporting his assertions. For example, respondent claims that, "during cross examination, [petitioner] was unable to explain [respondent's] signature as Borrower on the Mortgage or [respondent's] signature as Borrower on the Note" but he fails to cite to any page in the record on appeal to support his claim about cross-examination. The record on appeal does not contain a report of the proceedings, such as a verbatim transcript from the cross-examination hearing, the motion to reconsider hearing, or the hearing where the trial court made specific findings of fact and issued its judgment. See Ill. Sup. Ct. R. 323 (eff. Dec. 13, 2005).

¶ 7 In the event no verbatim transcript is available, Rule 323 provides for other procedures a party may employ to incorporate a report of proceedings in the record on appeal. Respondent could have provided a bystander's report pursuant to subsection (c) of Rule 323, or an agreed statement of facts pursuant to subsection (d) of the rule. See Ill. Sup. Ct. Rs. 323(c), (d) (eff. Dec. 13, 2005). However, respondent failed to provide any report of the proceedings. The trial court's written orders from the common-law record reflect that it heard oral arguments from the parties before it issued any of its rulings, including the rulings respondent now challenges. Ultimately, we do not know on what basis or bases the trial court utilized when it entered its rulings at the relevant hearings or its final judgment.

¶ 8 Supreme court rules are not mere suggestions. See *Applebaum v. Rush University Medical Center*, 231 Ill. 2d 429, 447 (2008). The appellant bears the burden to present a sufficiently complete record of the proceedings before the trial court to support a claim that the trial court judgment was against the manifest weight of the evidence, and in the absence of a complete record,

the reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis. *Midstate Siding & Window Co. v. Rogers*, 204 Ill. 2d 314, 319 (2003) (citing *Webster v. Hartman*, 195 Ill. 2d 426, 433 (2001), and *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)). Therefore, we will resolve any doubts arising from this record against respondent.

¶ 9 Further, in the absence of the report of proceedings, issues raised for which a trial court's rationale would be necessary to the determination of the appellate court are not subject to review. See *Landau & Associates, P.C. v. Kennedy*, 262 Ill. App. 3d 89, 92 (1994) (citing *Frisch Contracting Service Co. v. Personnel Protection, Inc.*, 158 Ill. App. 3d 218, 221 (1987)). This court may also summarily affirm the judgment of the trial court in the absence of a proper record. See *Landau & Associates, P.C.*, 262 Ill. App. 3d at 92 (citing *Wayne Township Board of Auditors v. Ludwig*, 154 Ill. App. 3d 899, 905 (1987)).

¶ 10 To distribute property upon dissolution of marriage, a trial court must first classify that property as either marital or nonmarital. *In re Marriage of Hegge*, 285 Ill. App. 3d 138, 140 (1996). The Illinois Marriage and Dissolution of Marriage Act creates a rebuttable presumption that all property acquired by either spouse after marriage and before dissolution is marital property regardless of how title is held. See *Hegge*, 285 Ill. App. 3d at 140; 750 ILCS 5/503(b) (West 2010). The presumption is rebutted by showing that the property was acquired by a method listed in subsection 503(a), *e.g.*, property acquired by gift, legacy, or descent; property acquired in exchange for property acquired before the marriage; or property excluded by valid agreement of the parties. 750 ILCS 5/503(a) (West 2010). Because that determination rests largely on the trial court's evaluation of the credibility of the witnesses, the trial court's determination that an asset is

nonmarital property will not be disturbed on appeal unless that determination is against the manifest weight of the evidence. *Hegge*, 285 Ill. App. 3d at 140.

¶ 11 We can only speculate that the trial court found the residence fell under one of the eight exceptions listed under section 503(a) of the Illinois Marriage and Dissolution of Marriage Act. A transcript of the proceedings was necessary to allow this court to review precisely what evidence the trial court considered in resolving the discrepancy between petitioner's and respondent's allegations concerning the residence and the rationale the trial court used in making its ruling. Respondent, however, failed to include a transcript of the report of proceedings from the hearing where the trial court made specific findings of fact or issued its judgment, and we decline to give credence to respondent's unsupported representations of what allegedly transpired at the hearings. Because we resolve any doubts arising from this record against respondent (see *Foutch*, 99 Ill. 2d at 392), we thus presume that, when the trial court classified the residence as nonmarital property, the ruling was in conformity with the law and had a sufficient factual basis. See *Midstate Siding & Window Co.*, 204 Ill. 2d at 319 (citing *Webster*, 195 Ill. 2d at 432-33).

¶ 12 In the present case, we conclude that the condition of the record on appeal as respondent provided to this court is incompatible with meaningful review of the contentions he seeks to have this court overturn, and it requires that the judgment of the trial court be affirmed. Respondent's contentions involve an examination of evidence presented by the parties and questions of fact and credibility ruled on by the trial court, and the only items in the record on appeal bearing any relevance to the merits of respondent's contention that the trial court's judgment was against the manifest weight of the evidence are the trial court's written orders themselves. The written orders reflect that the trial court conducted hearings before it issued its ruling. We have found nothing else

in the record to lead us to conclude that the trial court's decision, reached after reviewing the case file, was against the manifest weight of the evidence. We presume that the trial court's orders were in conformity with the law and had a sufficient factual basis. See *Midstate Siding & Window Co.*, 204 Ill. 2d at 319; *Webster*, 195 Ill. 2d at 432-33; *Foutch*, 99 Ill. 2d at 392. Accordingly, we hold the trial court's classification of the residence as petitioner's nonmarital property was not against the manifest weight of the evidence.

¶ 13 For the forgoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 14 Affirmed.