2018 IL App (2d) 170176-U
No. 2-17-0176
Order filed January 23, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF MICHELLE STRANYICZKI, Petitioner-Appellee, and LORAND STRANYICZKI, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County No. 2014-D-493 Honorable Kevin T. Busch, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Hudson and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's judgment was affirmed where (1) the court's finding that respondent reduced his income in bad faith was not against the manifest weight of the evidence and supported a determination to impute income, and (2) by failing to cite authority or to the record, respondent forfeited his arguments that the trial court erred in assessing support arrearages, erred in ordering respondent to compensate petitioner for equity in a marital property, and erred in ordering respondent to contribute to petitioner's attorney fees.

¶ 2 Respondent, Lorand Stranyiczki, appeals from the judgment for dissolution of marriage and posttrial orders. The trial court found that Lorand reduced his income in bad faith to evade his obligations of support and maintenance. The court ordered Lorand to take steps to bring his

income back to historic levels. The court further ordered that he pay petitioner, Michelle Stranyiczki, accrued arrearages for his temporary support obligation and compensate her for her equity in a marital property. The court also ordered Lorand to contribute toward Michelle's attorney fees. Lorand contends that the trial court's findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The following facts are taken from the transcript of the trial and the common law record. Lorand graduated from college in 1997 with a degree in construction management. He began his career as a plasterer with G&J Plastering. In 2001, Lorand and two others purchased G&J Plastering from George Palicek. In 2003, Palicek took back the business for non-payment, but kept Lorand as an employee. G&J Plastering changed ownership again in 2004, and Lorand was elevated to manager. In 2007, Lorand left G&J Plastering and founded Best Construction, d/b/a G&J Services Group (Best Construction).

¶ 5 Michelle and Lorand were married on February 23, 2007. They had one child, Milo, born February 20, 2010. During the marriage, Michelle stayed home and ran the household, paid the bills for their several properties, and cared for Milo. The household living expenses, including mortgages and car payments, were approximately $19,200 per month. The breakdown of the marriage began sometime around August 2012, when Michelle and Lorand argued over having more children.

¶ 6 Lorand moved out of the marital home in January 2014, and Michelle filed the instant petition for dissolution in April 2014. On June 19, 2014, the trial court ordered Lorand to pay temporary unallocated support of $3000 per week during the pendency of the divorce. On October 31, 2014, the court jailed Lorand for contempt of court for failure to pay support.

Lorand asked the trial court to reduce his support obligation, stating that his business had failed and his income had been dramatically reduced. On November 20, 2014, in response to Lorand's petition to modify support, the trial court deferred ruling on the substance of the petition, but ordered: "[S]upport of $3,000 per week is hereby abated (not reduced) by $2,000 to $1,000 per week until further order of court, and subject to further review." On January 4, 2016, the court again abated the support payments to $516 per week, while again deferring its substantive ruling on the petition to modify support and keeping the original support order in place, stating: "[F]ull amount of support of $3,000/wk shall continue to accrue ***."

¶ 7 The trial began on April 18, 2016. The court heard five days of testimony and reviewed thousands of pages of exhibits. Lorand testified that his business began to fail in 2012 due to bad estimating. This testimony was contradicted by documentary evidence. Best Construction's sales grew from $1.8 million in 2010 to over $4.2 million in 2013. Lorand's W-2 wages increased correspondingly, with earnings of $277,181 in 2010, $411,542 in 2011, $366,271 in 2012, and $459,152 in 2013.

¶ 8 On November 9, 2016, the court delivered its judgment for dissolution of marriage. The court ordered, *inter alia*, maintenance from Lorand to Michelle in the amount of $1750 per month. As part of the maintenance order, the court directed Lorand to take steps to maximize his income to historic levels prior to a review on January 1, 2018. The court also ordered Lorand to pay Michelle $608 per month in child support, but indicated that this amount was "artificially low" because it did not find Lorand's testimony regarding the reasons for his reduction in income to be credible. The court held that on November 1, 2017, it would "impute income of at least $300,000, thereby increasing monthly child support to $3,079.00." The court further ordered Lorand to pay Michelle $76,000 in compensation for her equity in the marital property

located at 1730 Wallace Avenue, St. Charles, Illinois. The court reserved its decisions on the amount of the support arrearage and contribution from Lorand to Michelle for attorney fees until further hearing.

¶ 9 On January 23, 2017, the court heard arguments on posttrial motions. The court found that the original order for unallocated temporary support was to have remained in effect until May 1, 2015, when Best Construction "truly" and "actually" stopped operating. Therefore, the court's order provided that support arrearages accrued at the rate of $3000 per week from June 19, 2014, to May 1, 2015; from May 1, 2015, until November 9, 2016, unallocated support accrued at the rate of $544.15 per week. After offsetting for payments made, Lorand was ordered to pay arrearages of $85,775 for principal and $13,711 in interest (as of March 9, 2017).[1]

¶ 10 On March 14, 2017, the court held a hearing on Michelle's petition for contribution to attorney fees. Michelle argued that her legal fees were driven up by Lorand's bad faith dealings, and she asked for contribution in the amount of $101,026. The court ordered Lorand to pay $20,000 to Michelle's attorney. Lorand timely appealed.

¶ 11 II. ANALYSIS

¶ 12 At the outset, we note that Lorand's opening brief violates multiple Illinois Supreme Court Rules. "The rules of procedure concerning appellate briefs are rules and not mere suggestions." *Hall v. Naper Gold Hospitality LLC*, 2012 IL App (2d) 111151, ¶ 7. It is a serious matter when a party fails to comply with the rules regarding appellate briefs. *Burmac Metal Finishing Co. v. West Bend Mutual Insurance Co.*, 356 Ill. App. 3d 471, 478 (2005). These rules

[1] At the January 23, 2017 hearing, the court issued its findings but did not calculate the specific amounts owed. It invited the attorneys to come to the next hearing with detailed calculations, which the court then incorporated into its order on March 16, 2017.

are meant to compel parties to present clear and orderly arguments so that a reviewing court can properly ascertain the arguments and dispose of the issues. *Hall*, 2012 IL App (2d) 111151, ¶ 7. This court may justifiably strike any brief that lacks substantial conformity to supreme court rules. *Hall*, 2012 IL App (2d) 111151, ¶ 7.

¶ 13 Particularly problematic in Lorand's brief are his statement of facts and argument sections. Rule 341(h)(6) requires that the statement of facts contain accurately and fairly stated facts, without argument, and with citations to the appropriate pages of the record. Ill. S. Ct. R. 341(h)(6) (eff. Nov. 1, 2017). Lorand makes dozens of factual assertions without citing the record on appeal. When he does cite the record, Lorand often misstates or misrepresents the facts. Lorand also peppers argument throughout the statement of facts.

¶ 14 The argument section similarly deserves comment. Rule 341(h)(7) instructs: "Argument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017). Lorand provides scant authority and no citations whatsoever to the record. His barely discernible arguments consist primarily of unsupported conclusory statements. As such, Lorand's arguments fail to meet the minimum requirements.

¶ 15 Michelle has filed several motions directed against Lorand's brief. She asks, *inter alia*, that this court strike Lorand's statement of facts and argument sections. This court would be justified in granting Michelle's motions. See *Burmac Metal Finishing*, 356 Ill. App. 3d at 478. We recognize, however, that doing so would effectively cause us to dismiss Lorand's entire appeal, which is the harshest of remedies. While this court has authority to strike the statement of facts, the argument, or the entire brief, it is also within our discretion to address the issues on the merits. *Zadrozny v. City Colleges of Chicago*, 220 Ill. App. 3d 290, 293 (1991). In this case,

we are able to glean sufficient facts to understand the appellant's issues from the record and Michelle's brief. We find it in the interest of judicial economy to address the merits, at least as far as the individual arguments allow. See *Zadrozny*, 220 Ill. App. 3d at 293. Accordingly, we deny Michelle's motion to dismiss Lorand's brief and argument, as well as her motion to strike Lorand's statement of facts. Additionally, we deny Michelle's motion to strike the attachment to Lorand's notice of appeal as moot.[2]

¶ 16 On appeal, Lorand contends that the trial court erred in (1) finding that Lorand colluded with others to intentionally shut down Best Construction, which the court used as a basis to order that he (in Lorand's words) "re-start his failed business and earn $300,000," (2) calculating support arrearages based on income that Lorand no longer earned, (3) ordering that Lorand pay $76,000 to Michelle as reimbursement for her marital equity in a commercial property, and (4) ordering that Lorand pay $20,000 to Michelle's attorney as contribution toward Michelle's attorney fees.

¶ 17 We begin with Lorand's argument that the trial court erred in finding that Lorand intentionally shut down Best Construction, and in ordering Lorand to restart his business and earn $300,000. We point out that the court did not order Lorand to restart his business, only that he return to his historic levels of income. In essence, Lorand sees the court's order as requiring the imputation of income, but Lorand is equivocal about whether he challenges the imputation of income as it relates to the court's order for maintenance, child support, or both. It is instructive

[2] Michelle correctly stated that the judgment for dissolution of marriage attached to Lorand's original notice of appeal contained hand-written notes that were not part of the record. Lorand cured the potential problem when he attached a clean copy of the judgment for dissolution of marriage to his amended notice of appeal.

to review the precise language in the court's judgment for dissolution of marriage. With regard to maintenance, the court ordered Lorand to pay $1750 per month to Michelle, adding:

> "Lorand is further ordered to take steps to maximize his income to historical levels. Maintenance shall be reviewed January 1, 2018. At that time, *the court will take into account Lorand's efforts, and absent compelling evidence regarding his inability to return to his historic earnings*, the court will impute to him his average earnings of approximately $300,000." (Emphasis added)

Clearly, by the plain language utilized in the order, the court merely threatened to impute income, but had not done so in fact. Regarding child support, the court utilized different language:

> "Child support is set at $608.00 per month. Although set at a guideline for $70,000 annual income, given this court's finding above [that Lorand's closing of Best Construction was an intentional reduction of income made in bad faith], this amount is artificially low. *Beginning November 1st, 2017 (one year from judgment) the court will impute income of at least $300,000, thereby increasing monthly child support to $3,079.00.*" (Emphasis added)

Unlike the court's threat to impute income in the future in the previous provision, here the court provided a date certain and an amount for a specific increase in child support. Therefore, we can review Lorand's objection to imputation of income only as it relates to the order of child support, not maintenance.

¶ 18 We review a trial court's determinations for support for an abuse of discretion, and, to the extent that those determinations are based on evidentiary predicates, we review those findings as to whether they are against the manifest weight of the evidence. *In re Marriage of Schneider*,

214 Ill. 2d 152, 173 (2005); *In re Marriage of Bates*, 212 Ill. 2d 489, 523-24 (2004). In so doing, we view the evidence in the light most favorable to the appellee. *Bates*, 212 Ill. 2d at 516. Findings are against the manifest weight where the opposite conclusion is clearly evident or where the findings are arbitrary, unreasonable, or not based on the evidence. *In re Marriage of Patel and Sines-Patel*, 2013 IL App (1st) 112571, ¶ 66. Where the evidence permits more than one reasonable inference, we adopt the inference that supports the court's order. *Bates*, 212 Ill. 2d at 516.

¶ 19 When setting the level of support, the court must first establish the noncustodial parent's income. 750 ILCS 5/505(a)(1) (West 2016). Establishing net income is often a difficult exercise and can serve as an impediment to determining an award of support. *In re Marriage of Gosney*, 394 Ill. App. 3d 1073, 1077 (2009). "It is well established that courts have the authority to compel parties to pay child support at a level commensurate with their earning potential." *Gosney*, 394 Ill. App. 3d at 1077. As such, courts may order parties to seek more lucrative employment, or to pay support as if they had done so. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 106 (2000). Moreover, a party claiming a loss of income must demonstrate that the change in circumstance occurred in good faith and not to evade obligations of support. See *Sweet*, 316 Ill. App. 3d at 106.

¶ 20 Lorand argues that he was no longer earning as much as he did as owner of Best Construction, and further, that current circumstances rendered him incapable of returning to that level of income. Lorand testified that he closed Best Construction because of "bad estimating" in 2012. The bad estimating led to higher-than-anticipated costs in 2013, which, in turn, eroded the company's working capital. By October 2014, the company could no longer operate.[3]

[3] The trial court found that Best Construction still managed projects, retained employees,

Lorand testified that he immediately went to work as a salaried employee for LF Construction in order to mitigate his loss of income as owner of Best Construction. Lorand further argues that he is buried in debt and unable to obtain the new capital it would take to restart his firm. As such, he is incapable of returning to his historic levels of income.

¶ 21 Lorand cites *In re Marriage of Gosney*, 394 Ill. App. 3d 1073 (2009). He correctly states that the trial court must find that at least one of three factors is present before it may impute income: (1) the payor is voluntarily unemployed, (2) the payor is attempting to evade a support obligation, or (3) the payor has unreasonably failed to take advantage of an employment opportunity. *Gosney*, 394 Ill. App. 3d at 1077. Lorand claims that he was never voluntarily unemployed, because he immediately took a salaried position at LF Construction following his closure of Best Construction. This argument misses the mark in light of the fact that the trial court found that Best Construction closed only because of the voluntary and intentional actions of Lorand. Lorand also argues that the trial court explicitly found that he did not hide or misappropriate funds, which he implies rules out any possibility that he was attempting to evade his support obligation. Lorand misstates the trial court's finding. The court found that, while the exact details of how all of the money was extracted and where it went may not be clear, the court was satisfied that the evidence showed that Lorand simply chose to draw money out of Best Construction and shut it down. Lorand's attorney also cited *Gosney* during the posttrial hearing when the court considered his motion to reconsider, but the court was not impressed:

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collected revenue, and paid vendors until the spring of 2015. Therefore, the court found that Best Construction closed in May 2015, not October 2014.

> "I'm familiar with the case *** that you cite. And I understand that the Court must find that the person is either voluntarily unemployed or that they are voluntarily underemployed or that they were willfully acting in a way that seeks to avoid paying support or maintenance. And I believe that all of the above were proven in this case.
>
> I think that the evidence showed that [Lorand] specifically orchestrated things so that he could try to argue that his business was failing and that he had no choice but to go to work for a lesser salaried position."

¶ 22 Lorand also cites *In re Marriage of Smith*, 77 Ill. App. 3d 858 (1979). In *Smith*, a husband voluntarily retired during the divorce proceedings. *Smith*, 77 Ill. App. 3d at 859-60. The court looked beyond the husband's actual earnings and imputed income based on his capacity to earn. *Smith*, 77 Ill. App. 3d at 864. Lorand argues that the circumstances here are distinguishable from *Smith*, because the husband in *Smith* voluntarily retired, whereas Lorand closed his business involuntarily when it "ran out of money." Lorand asserts that he closed the business for legitimate reasons, but he points to no facts in the record to support that proposition.

¶ 23 Additionally, the court heard evidence tending to show that Lorand intentionally hindered Best Construction's operational capacity by drawing out money and running up debts. In 2014, the year Lorand made the decision to close the business, Best Construction paid significant amounts for past invoices to companies that were no longer in business. That same year, Lorand gave considerable pay raises to a number of employees and paid bonuses on top of the increases, which contradicted his assertions at trial that he did not have enough working capital to pay his employees and sub-contractors.

¶ 24 The trial court also considered Lorand's unusual relationship with his new employer, LF Construction. Lorand and several key persons at Best Construction, LF Construction, and other

similar businesses had worked together for years in various capacities. In August 2014, Best Construction paid LF Construction $42,000 for unspecified services. Two months later, LF Construction hired Lorand as an employee to do the same job he had been doing at Best Construction for a small fraction of the salary. LF Construction took over at least one large project from Best Construction for no consideration. LF Construction moved into Best Construction's place of business. LF Construction adopted Best Construction's d/b/a, "G&J Services Group." LF Construction hired Best Construction's employees to do the same work out of the same facility. LF Construction even made payments on Lorand's personal BMW for a number of months and loaned him money above and beyond his W-2 salary of $70,000 per year. When Michelle's attorney attempted to depose the owner of LF Construction, he evaded her subpoena and remained unavailable throughout the trial. The trial court found that this arrangement was a smokescreen created by Lorand and others to conceal his true income:

> "The court finds the there is a close connection between all of these companies, and it appears that all of the principals are in collusion with one another. *** The same parties worked for the many business entities, performing the same type of work respectively. Support staff remained uniform, and leadership/ownership rotated like musical chairs. Lorand, his associates and relatives actively engaged in an orchestrated game to manipulate various businesses to suit their particular purposes. *** The evidence ultimately raises more questions than answers as it relates to the level of control Lorand actually has over a business allegedly controlled by others in his musical chairs scheme."

¶ 25 The only other authorities Lorand offers are *Vernon v. Schuster*, 179 Ill. 2d 338 (1997), and *M. I. G. Investment, Inc. v. Marsala*, 92 Ill. App. 3d 400 (1981). These cases are

inapplicable, as they address a concept in corporate law known as "successor corporate nonliability," which has no applicability to the present facts.

¶ 26 The issue here is whether the trial court's finding that Lorand intentionally lowered his income was unreasonable or arbitrary. The court heard conflicting evidence concerning the reasons for closing Best Construction. Lorand insisted that his otherwise successful business became insolvent because of bad estimating, but the court found that he "failed to present credible evidence to support these broad and general statements." Conversely, Michelle presented thousands of pages of documents in support of her arguments. In reaching its conclusion, the trial court weighed the evidence and assessed the credibility of the witnesses. When viewing the evidence in the light most favorable to Michelle, we cannot say that the trial court's finding that Lorand voluntarily reduced his income in bad faith was against the manifest weight of the evidence. Therefore, the trial court's ultimate determination to impute income in setting child support after November 1, 2017, was not an abuse of discretion.

¶ 27 Next we turn to Lorand's argument that the unallocated support arrearages were improperly assessed. We note that Lorand failed to support this argument with citations to the record or to authority, in clear violation of Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017). "[M]ere contentions, without argument or citation of authority, do not merit consideration on appeal." *Hall*, 2012 IL App (2d) 111151, ¶ 12. Failure to cite authority or to the record are independent grounds to forfeit an argument. *In re Marriage of Gregory*, 2016 IL App (2d) 150774, ¶ 32; *In re Marriage of Steel*, 2011 IL App (2d) 080974, ¶ 55. Lorand fails to cite either. Accordingly, Lorand forfeited this argument. Even if we were to set aside the forfeiture, which we do not, we do not believe the court's finding was against the manifest weight of the evidence. The court's decision on arrearages hinged on when Best Construction

ceased business operations. Lorand asserted that he closed the business and lost that stream of income in October 2014, but the court also heard evidence that the business remained operational until May 2015. It is for the trial court to resolve conflicts in evidence. *Nelson v. County of De Kalb*, 363 Ill. App. 3d 206, 210-11 (2005). Even assuming *arguendo* that the issue was not forfeited, we would not set aside the judgment simply because there was conflicting evidence.

¶ 28 We next turn to the issue of the marital property at 1730 Wallace Avenue, Unit A, St. Charles, Illinois. Lorand appears to claim that the equity in the property was lost as a result of Best Construction's failure. Lorand again fails to cite to authority or the record in support of his argument, in clear violation of Illinois Supreme Court Rule 341(h)(7) (eff. Nov. 1, 2017). Consequently, this argument is also forfeited.

¶ 29 Lastly, we consider Lorand's argument that the trial court improperly ordered him to contribute to Michelle's attorney fees. Lorand appears to be complaining that the court ruled on this issue without a required hearing. Lorand ignores the fact that the court heard testimony on this subject during trial and subsequently conducted a full posttrial hearing on the matter. Whatever the merits of his argument, Lorand again neglects to cite to authority or the record. This argument is forfeited.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 32 Affirmed.