2015 IL App (5th) 140065-U

NO. 5-14-0065

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
LISA A. HALE,	)	Alexander County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 12-D-27
	)	
RICHARD E. HALE, JR.,	)	Honorable
	)	Mark H. Clarke,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Welch and Schwarm concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's judgment of dissolution of marriage was affirmed where the appellant failed to submit a sufficient record on appeal for this court to review the issues presented.

¶ 2 The respondent, Richard E. Hale, Jr., appeals the judgment of dissolution of his marriage to the petitioner, Lisa A. Hale, arguing that the trial court erred in its findings of fact and division of marital property. Because the appellant has failed to submit a sufficient record on appeal for this court to review the issues presented, we affirm.

¶ 3 BACKGROUND

¶ 4 On October 12, 2012, Lisa filed a petition for dissolution of marriage. On December 3, 2012, Richard filed a counterpetition for dissolution of marriage. On December 20, 2012, Lisa filed a response to the counterpetition.

¶ 5 The case was called for a second-stage hearing on May 31, 2013. The report of proceedings reflects that each party was present with counsel. Counsel for both parties submitted stipulated Joint Exhibits 1 through 5 "instead of presenting testimony as to the matters contained therein." The court noted on the record that Joint Exhibit 1 purported to be "Hale vs. Hale property list"; Joint Exhibit 2 appeared to be "a couple of pay stubs, three pages"; Joint Exhibit 3 was captioned "Cost of Repairs"; Joint Exhibit 4 was "Monthly Expenses of Richard Hale"; and Joint Exhibit 5 was "Monthly Expenses of Lisa Hale." Unfortunately, those exhibits are not included in the record on appeal.

¶ 6 When the court asked what other evidence counsel had to present, counsel advised the court that they had agreed to make an argument to the court as to the allocation of marital property listed in Joint Exhibit 1. The court indicated that it wanted the arguments in writing.

¶ 7 The court and counsel then discussed issues related to child support, Richard's dissipation of marital assets, and maintenance. Neither counsel called any witness or party to testify, clarify, or elucidate any facts or issues despite ample opportunity to do so. After the hearing, each party submitted written argument.

¶ 8 In her written argument, filed July 29, 2013, Lisa discussed, among other things, Richard's claim that he made $24,800 in improvements to the residence the parties lived

in during the marriage. Lisa argued that Richard failed to establish, and could not establish, any ownership interest by either party in the residence. She stated that, at all relevant times, the residence was owned by her parents, Mr. and Mrs. Clyde Tatum. She also stated that during the marriage, Richard lived in the residence rent-free. She argued that none of the expenditures Richard claimed had improved any marital asset. Lisa also discussed Richard's claim that he had an interest in $9,675.36 in jewelry she owned. She argued that the jewelry was a gift to her and that it was not part of the marital estate.

¶ 9 On November 27, 2013, after hiring new counsel, Richard filed his written argument. That same day, he filed a motion for the court to reopen proofs to allow additional evidence. The trial court denied the motion, finding that all information referred to in the motion was known to Richard before the second-stage hearing on May 31, 2013.

¶ 10 On January 7, 2014, the court entered a judgment of dissolution of marriage. In the judgment, the court denied Richard's claim for improvements to the home the parties lived in during the marriage because the home belonged to Lisa's parents. The court found that neither party had an ownership interest in the home, and that, during the marriage, they lived in the home rent-free. The court stated that it would accept Richard's suggestion that all property in Joint Exhibit 1 was marital property as it had either been so stipulated or there was a lack of evidence for the court to find that it fit into one of the nonmarital exceptions. The court also stated that it would further accept Richard's suggestion that all property identified in Joint Exhibits 1, 2, and 3 be awarded to Lisa.

The court stated that it was dividing the marital funds in half, awarding each party one half. Richard filed a timely notice of appeal.

¶ 11 ANALYSIS

¶ 12 On appeal, Richard argues that (1) the trial court "improperly found the 'Improvements to Home' to not be an asset of the marriage and failed to consider the value as divided to [Lisa]" and (2) the court "failed to determine the classification of the Jewelry, failed to assess a value of the same and failed to allocate the value of the [jewelry] to the party awarded."

¶ 13 The Illinois Supreme Court "has long held that in order to support a claim of error on appeal the appellant has the burden to present a sufficiently complete record." *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984)). "In fact, '[f]rom the very nature of an appeal it is evident that the court of review must have before it the record to review in order to determine whether there was the error claimed by the appellant.' " *Id.* (quoting *Foutch*, 99 Ill. 2d at 391). "Where the issue on appeal relates to the conduct of a hearing or proceeding, this issue is not subject to review absent a report or record of the proceeding." *Id.* "Instead, absent a record, 'it [is] presumed that the order entered by the trial court [is] in conformity with the law and had a sufficient factual basis.' " *Id.* (quoting *Foutch*, 99 Ill. 2d at 392).

¶ 14 In *Webster*, the trial court granted the defendant's motion to enforce a settlement agreement against the plaintiff and dismissed the plaintiff's cause of action with prejudice. *Id.* at 428. The plaintiff appealed *pro se*. *Id.* at 431. The Illinois Supreme Court noted that the record on appeal contained no transcript of the hearing on the

defendant's motion to enforce settlement, no report of proceedings, no bystander's report, and no agreed statement of facts. *Id.* at 433. In addition, the plaintiff did not file a response to the defendant's motion to enforce settlement or a motion to reconsider the order granting that motion. *Id.* The court noted that it knew only that on December 7, 1998, counsel for both parties were present and that the cause was called for hearing on the defendant's motion to enforce settlement. *Id.* The court noted that it did not know what evidence or arguments were presented at that hearing; nor did it know the basis for the trial court's decision. *Id.* The court noted that it did know, however, that the trial court granted the defendant's motion. *Id.* Under these circumstances, the court presumed that the trial court heard adequate evidence to support its decision and that its order granting the defendant's motion to enforce settlement was in conformity with the law. *Id.* at 433-34.

¶ 15 Similarly, in *Skaggs v. Junis*, 28 Ill. 2d 199 (1963), the Illinois Supreme Court rejected the argument that where the record lacks information of evidence presented at a hearing, the reviewing court must assume none was heard and that the court's order, therefore, was improper. Instead, the court held that "it is presumed that the court heard adequate evidence to support the decision that was rendered" unless the record indicates otherwise. *Id.* at 201-02.

¶ 16 In the present case, the appellant's entire appeal is predicated on exhibits outside the record. Therefore, the appellant has failed to meet his burden of presenting a sufficiently complete record. See *Webster*, 195 Ill. 2d at 432; *Foutch*, 99 Ill. 2d at 391-92. Under these circumstances, we presume that the trial court heard adequate evidence

to support its decision and that its property distribution was in conformity with the law. See *Webster*, 195 Ill. 2d at 433-34; *Foutch*, 99 Ill. 2d at 392; *Skaggs*, 28 Ill. 2d at 201-02.

¶ 17 CONCLUSION

¶ 18 For the foregoing reason, we affirm the judgment of the circuit court of Alexander County.

¶ 19 Affirmed.