2021 IL App (2d) 190819-U
No. 2-19-0819
Order filed January 14, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LISA M. ALLEGRA, Petitioner-Appellee, and ROBERT ALLEGRA, Respondent-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 17-D-1802 Honorable Robert E. Douglas, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Bridges and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: In marriage dissolution action, the trial court did not err in denying the husband's motion seeking bifurcation on the ground that his current incarceration would preclude him from paying any order of child support; to the contrary, the record showed the husband's ability to pay. There was also no merit to the husband's argument that the trial court's property division was erroneous because it was based on a premarital agreement that was not entered into evidence; in fact, the agreement was entered into evidence. Finally, the trial court's award of child support was reasonable and in conformity with statutory requirements.

¶ 2 Respondent, Robert Allegra, appeals from an order of the circuit court of Du Page County dissolving his marriage to petitioner, Lisa M. Allegra. Robert argues: (1) the trial court abused its discretion in denying Robert's motion to bifurcate the dissolution judgment; (2) the court erred in

its division of property; and (3) the court erred in its award of child support. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 11, 2017, Lisa petitioned for dissolution of her marriage to 63-year-old Robert. The parties were married on October 23, 2005, and had one minor child. In July 2017, Robert was sentenced to a 65-month federal prison term. Robert's expected release date was February 2022. On September 14, 2017, Robert filed a counterpetition for dissolution of marriage. Although the parties had executed a premarital agreement (PMA) on October 23, 2005, it was neither referenced in nor attached to either petition.

¶ 5 On January 9, 2018, Robert's attorney filed a motion to withdraw, which was granted on January 24, 2018. Robert was given 21 days to retain new counsel. On February 23, 2018, the trial court entered a default judgment against Robert for failure to file a supplemental appearance. On February 28, 2018, attorney Nicholas J. Lagattuta filed an appearance on Robert's behalf. Robert's subsequent motion to vacate the default judgment was granted.

¶ 6 On August 20, 2018, Lisa petitioned for temporary child support. Lisa alleged that Robert was currently incarcerated. She further alleged:

> "6. [Lisa], by agreement of the attorneys for both Parties and the U.S. Attorneys' Office, had been receiving $1500.00 per month for 'child expenses' and an additional $1000.00 per month for the health insurance costs for the minor child and herself from the continuing monthly income [Robert] was receiving into his business accounts.
>
> In June of 2018, [Robert], through a third-party, had [Lisa] removed from his business accounts and then closed the accounts, thereby denying [Lisa] access to the child

> expenses and health insurance premium monies. [Robert's] actions were also in violation of the agreed temporary restraining order entered in this matter (Exhibit 'A').
>
> 7. Upon information and belief, [Lisa] believes that [Robert], through the same third-party, has reopened his business accounts and those accounts are still receiving sufficient income from which to provide support for the minor child and [Lisa] to maintain the marital residence and to otherwise meet his obligations attributable to and arising out of the marital relationship."

She asked that Robert "be ordered to pay child support from his business accounts that are currently receiving monthly income payments." She also asked that "the amount of [Robert's] financial contribution be commensurate with the standard of living enjoyed by the Parties and their minor child prior to the filing of the Petition for Dissolution of Marriage."

¶ 7 On August 23, 2018, the trial court granted Robert 21 days to respond to Lisa's petition for temporary child support and set the matter for a hearing on September 26, 2018.

¶ 8 On September 6, 2018, Lavelle Law, Ltd. filed an appearance as additional counsel for Robert.

¶ 9 On September 12, 2018, Robert filed a response to Lisa's petition for temporary child support, "neither admit[ing] nor den[ying] the allegations" contained in paragraphs six and seven of Lisa's petition.

¶ 10 On September 26, 2018, the trial court, "being fully advised" and "[o]ver strenuous objection" from Robert's counsel, ordered Robert "to pay [Lisa] $1200.00 per month for child support plus the minor child's portion of the health insurance premium." The record does not contain a report of proceedings from this date. The court further ordered that "[a]ny motions

regarding validity of the [PMA] must be filed within 30 days." In addition, the court set the matter for trial on March 4 and 5, 2019.

¶ 11 On October 23, 2018, Robert filed a motion for declaratory judgment, asking the trial court to declare the PMA to be invalid, unenforceable, and unconscionable. In paragraph two of the motion, Robert asserted that the parties entered into the PMA on October 23, 2005, and stated that the PMA was "attached hereto as 'EXHIBIT A' and made part hereof." In her response, Lisa admitted the allegations in paragraph two. (The PMA is not, in fact, attached to the motion or to the response in the common-law record.) The matter was set for hearing on December 11, 2018.

¶ 12 On November 28, 2018, Robert moved to continue the hearing on his motion for declaratory judgment, stating that he was incarcerated and "cannot gain permission to appear and testify on his behalf until after January 1, 2019."

¶ 13 On December 4, 2018, the trial court continued the hearing date on Robert's motion to January 9, 2019.

¶ 14 On December 7, 2018, attorney Lagattuta moved for leave to withdraw.

¶ 15 On December 26, 2018, Robert filed motion to set a phone and email schedule with his minor child, which was set to be heard on January 7, 2019.

¶ 16 On January 7, 2019, the trial court, "being fully advised in the premises," entered an order granting Lisa 21 days to respond to Robert's motion to set a phone and email schedule. In addition, the order noted that Robert voluntarily withdrew his motion for declaratory judgment. The court found that the "[PMA] entered into between the parties shall be upheld as valid and enforceable." The court granted attorney Lagattuta's motion to withdraw and struck the January 9, 2019, hearing date. The record does not contain a report of proceedings from this date.

¶ 17 On January 29, 2019, Robert's remaining counsel (Lavelle Law, Ltd.) filed a motion to continue the trial date, a motion for writ of *habeas corpus* so that Robert could attend the March 4 and 5 trial, and a motion to withdraw.

¶ 18 On February 6, 2019, the trial court granted Robert's remaining counsel leave to withdraw and gave Robert 21 days to obtain new counsel. The court set the matter for a pretrial conference on February 28, 2019. Also on February, 6, 2019, the trial entered a writ of *habeas corpus* "ordering and directing any official of the federal correctional institution located in Terre Haute, Indiana" to produce Robert on March 4 and March 5, 2019.

¶ 19 On February 25, 2019, attorney Frank M. Valenti entered an appearance on Robert's behalf and filed an emergency petition to continue the trial date due to his own medical issues.

¶ 20 On February 26, 2019, Lisa filed a petition for rule to show cause. Lisa alleged: (1) on September 26, 2018, the trial court ordered Robert to pay $1200 in monthly child support plus the child's portion of health insurance premiums; (2) on September 28, 2019, the attorneys for the parties agreed that the child's portion of the monthly premium was $250.99, and (3) therefore, Robert's monthly child support obligation was $1450.99. Lisa further alleged that, although Robert made the October, November, and December 2018 payments from his business checking account, he had made no payments since then.

¶ 21 On February 28, 2019, the trial court "being fully advised in the premises," entered an order granting attorney Valenti's emergency petition to continue the trial date, and the court set the matter for trial on June 10 and 11, 2019. The court ordered Robert to pay Lisa $4532.99 in child support arrearages. The order further stated: "The Court does hereby 'freeze' and enjoin any bank accounts in the name of or for the benefit of Robert Allegra with the exception of the monthly child support payment of $1450.99 until further order of Court." Robert was given until March 14,

2016, to respond to Lisa's petition for rule to show cause. The record does not contain a report of proceedings from this date.

¶ 22 On March 6, 2019, Robert filed a petition to abate child support, arguing that the trial court's prior order granting child support was entered by agreement of Robert's previous counsel and that Robert "is not receiving said sums of money at the present time." He asserted that his "business[] enterprises have failed to contribute any income as of this date with the exception of one $1500.00 payment per month which shall terminate within the very near future." He further asserted that he was incarcerated and "without any income to help defray any child support expenses or any other expenses."

¶ 23 On March 20, 2019, attorney Joseph A. Serpico filed an appearance as additional counsel on behalf of Robert.

¶ 24 On March 25, 2019, Robert filed a response to Lisa's petition for rule to show cause.

¶ 25 On May 9, 2019, the trial court entered a parental allocation judgment based on the parties' agreement. The agreement indicated that Robert was expected to be released from prison on April 6, 2022, and that the agreement would be reviewable at that time. Also on May 9, 2019, the trial court entered a writ of *habeas corpus* "ordering and directing any official of the federal correctional institution located in Terre Haute, Indiana" to produce Robert on June 10 and June 11, 2019.

¶ 26 On May 30, 2019, Robert filed an emergency motion to bifurcate or, in the alternative, to continue the trial. Robert alleged that, on May 22, 2019, his attorney learned that the Terre Haute Federal Correctional Institution would not be releasing Robert to attend trial. He further alleged:

> "11. The only issues remaining between the parties are financial in nature given that the issues relating to the minor child have been resolved and grounds are not disputed.

12. The facts of this case at this time would warrant bifurcation of this matter.

13. Robert Allegra is under a legal disability which warrants bifurcation of this matter with a Judgment for Dissolution of Marriage entered relative to Grounds and the Parental Allocation but reserving all financial issues in a Judgment for Dissolution.

14. The act that lead to Robert Allegra's incarceration occurred prior to the filing of any Petition for Dissolution of Marriage by Lisa Allegra.

15. Robert Allegra has a right to defend himself against the Petition for Dissolution of Marriage relative to the financial aspects of the Petition filed by Lisa Allegra and is unable to do so given the rules of the Bureau of Prisons."

¶ 27 A hearing on Robert's motion to bifurcate took place on May 29, 2019. At the hearing, attorney Valenti advised the trial court that the prison would not release Robert to attend trial. He argued that "the only issues we have *** are financial." He further asserted that Robert would likely be released on home confinement by the end of the summer. Lisa's counsel noted that Robert was granted a continuance on his declaratory-judgment motion and also a continuance of the trial dates due to his counsel's medical condition. Lisa's counsel argued the "pattern of behavior is the same." Counsel further asserted that Robert "has no protected right to be here" and that he "brought this upon himself." The trial court asked attorney Valenti whether he had any cases to show that Robert had a right to be present, because the court did not think that Robert did. Attorney Valenti conceded: "I agree there is no absolute right." The court denied the motion, stating:

"It's been continued now by several other counsel, all of whom seem to have reached a level of frustration with their client, and I'm not casting an aspersion on [Robert], but it seems that at some point in time they're just—the communication between the attorneys

and [Robert] broke down, and I—and I want to get this thing done for [Lisa], for [Lisa's] son, and for [Robert], just get it behind him."

¶ 28 Following the hearing, Robert filed a motion for reconsideration, arguing that "[t]he only issues remaining to be determined by this Court are financial in nature regarding the property of the parties," that he was the only witness who could "trace [the] transfer of assets from the date of the marriage until the present date," and that "denying the [motion] is depriving [Robert] of his Fourth Amendment Rights of Due Process."

¶ 29 On June 4, 2019, the trial court entered an order denying the motion to reconsider and noting that Robert's counterpetition for dissolution was voluntarily dismissed.

¶ 30 On June 5, 2019, attorney Serpico moved to withdraw as Robert's counsel.

¶ 31 The trial on the dissolution petition took place on June 10 and 11. At the outset, the trial court granted attorney Serpico's motion to withdraw, leaving attorney Valenti to represent Robert during the hearing.

¶ 32 The following relevant testimony was provided by Lisa. She stated that the PMA was signed in October 2005. At that time, Lisa declared about $2.3 million in assets and Robert declared about $6.5 million in assets. The parties had one child, who was 11 years old. Lisa indicated that she would continue to provide health insurance for the child. Lisa testified that Robert was sentenced and incarcerated on July 17, 2017. On that day, prior to sentencing, she asked Robert how much money he had left for them and he responded, "Basically nothing." Lisa testified that, at that time, he had "probably a million dollars" in assets. Two days later, she was made president of his business, Royal Palm Aviation. She was paid $600 every two weeks and received healthcare for her and the parties' child. She filed the petition for dissolution of marriage on September 12, 2017. On September 29, 2017, she was served by the government with a citation

to discover assets and asked to testify regarding Robert's businesses and finances. She appeared at the U.S. Attorney's office represented by counsel for a citation hearing. At that time, the parties, which included Lisa and her attorney, Robert's attorney, and the U.S. Attorney, reached an agreement as to the expenses Lisa could pay out from Robert's companies. Lisa testified to the approved expenses, which included the child's expenses. They approved $1088 for health insurance for Lisa and the child and $1500 for "child and living expenses." At the citation hearing, Lisa was able to see Robert's "presentence report." She agreed that the report could not be disseminated without the consent of the judge. When asked, based on what she had seen in the presentence report, how much Robert had claimed in assets at that time, attorney Valenti objected and the objection was sustained. Much of Lisa's testimony concerned real estate and property owned by the parties.

¶ 33 At the beginning of the second day of testimony, the following colloquy took place:

"MR. DUTHALER [Lisa's attorney]: Your Honor, you asked yesterday for copies of the child support orders. I did get them. So this is the original one when Mr. Lagattuta, I believe, was [Robert's] counsel and this—this is the freeze order on the Chase accounts. I think that this was just before Mr. Valenti and just after—okay.

MR. VALENTI: Is this—okay. Is this after the hearing or pretrial conference?

MR. DUTHALER: Pretrial conference.

Your Honor, my recollection, when Mr. Lagattuta was present, is that you made an initial finding that [Robert] was voluntarily unemployed.

THE COURT: I did.

MR. DUTHALER: Yes. And that was the start of—

MR. VALENTI: Okay.

THE COURT: All right. The court will take judicial notice of these."

Thereafter, testimony resumed and Lisa returned to the stand. The following colloquy occurred between Lisa and her counsel:

"Q. Lisa, I'm going to ask you some questions about child support, if I could.

Based upon the order entered by Judge Douglas in September of 2018, you were to receive $1450.99 per month for child support and contribution to the family—you and your son's health insurance; does that sound right to you?

A. Yes.

Q. If the court would choose to maintain that amount as a final order in this case, would you be satisfied with that?

A. Yes."

Lisa was also asked whether she would be "satisfied if the judge also ordered *** that the payment be made out of the business accounts of [Robert]." She responded, "Yes."

¶ 34 During the course of cross-examination, attorney Valenti asked Lisa about a provision in the PMA concerning property in Boca Raton, Florida. Lisa's counsel's objected, stating "[t]hat is not what it says." Lisa's counsel quoted the PMA. Robert's counsel replied, "I'm just asking for what the contribution was. I mean, the document speaks for itself."

¶ 35 At the close of the hearing, the trial court stated: "[L]et's go over what has been admitted and what has not and see if there's anything that you guys want to admit that hasn't." After going through several exhibits, (which did not include the PMA), the trial court asked the parties to provide "written closing with proposed findings" and stated that it would prepare a written judgment. Thereafter, the following colloquy took place:

"THE COURT: Can I ask one question, though, gentlemen, the premarital—the prenuptial agreement, has that been filed? Is it part of one of your pleadings or petitions, Mr. Duthaler?

MR. VALENTI: Do you want the answer to that, Judge?

THE COURT: Well, I did make a ruling, though at some point in time, didn't I?

MR. DUTHALER: You—you found it valid and enforceable.

MR. VALENTI: I'm just telling you—

THE COURT: Okay. I mean, I don't have it as an exhibit in front of me.

MR. DUTHALER: Okay. Well—

THE COURT: And it was never—I mean, there was no testimony to it—I mean, there was testimony about it but it wasn't—

MR. VALENTI: The whole record, Judge—

MR. DUTHALER: Judge, it actually doesn't surprise me because, I mean, when the case started, no attorney knew there was a premarital agreement.

THE COURT: Right. I mean, I have it but —I have it but—

MR. DUTHALER: Yes.

THE COURT: But it's not a—

MR. DUTHALER: See, I thought I had given it to [*sic*] as an exhibit on the back of a motion, the very—

THE COURT: Did you do a motion to—I mean, I guess my question is, how did I find it valid without something in front of me? I usually don't do that.

MR. DUTHALER: I—I think, and I could be wrong, the original—the original motion was filed by [Robert]. Obviously not Mr. Valenti but Mr. Lagattuta filed a motion

to find it void or whatever the language was. I think I attached a copy of my—a copy of the premarital agreement to my response to that motion.

THE COURT: I must have. It must have been because I got it from somewhere. But you didn't find it anyplace.

MR. VALENTI: I couldn't find it, Judge. I mean—and I hate to tell you the box I got from Mr. Lagattuta was like this. Okay. So I went through the whole box. I went through the records, I could not find a copy of it.

THE COURT: Since I have already made a ruling on it, do you have an objection to reopening the proofs long enough to put her up there, have her testify to it so that at least it's an exhibit so if we go to the Appellate Court—

MR. VALENTI: Can I—can I call my carrier?

THE COURT: Well, I don't know, I mean, because if you—if you go to the Appellate Court and I—I mean, you're going to have an incomplete record but I don't care if it's—I mean, I got what I got. I know I said it was—it was a valid prenup.

MR. VALENTI: Well, Judge, I understand.

THE COURT: I'm not going to put you in your position.

MR. VALENTI: Yes, I—

THE COURT: You're already in a tight enough position to begin with.

MR. VALENTI: Yes.

THE COURT: I have it. I know what it says. All right.

MR. DUTHALER: Are we going to file it, Judge, or—

THE COURT: I'm not putting it—I assume it's in there. I'll go back and look and I will take judicial notice of it if it's a portion of the record.

MR. DUTHALER: Okay. Or else I can reopen the proofs as well.

THE COURT: Well, I don't want to put him in a bind.

MR. DUTHALER: No, I—I [*sic*] rather not either, Judge.

THE COURT: At this point, since everything—you know, Mr. Valenti has, in my opinion, done a Yeoman's job. He hasn't been—you know, wasn't rude to Mrs. Allegra. He was—he was a gentleman all the way through this. And as I said before, I made him try this with one hand tied behind his back. I don't want to open him up to—to additional problems, so—

MR. DUTHALER: You're not going to get any argument from me on that, Judge.

MR. VALENTI: Okay.

THE COURT: So we're all set. So your closings are due to me on the 24th and my ruling will be due on the 1st."

¶ 36 On June 26, 2019, the trial court entered an order noting that it had "read the parties[']closing arguments" and that Lisa had moved to reopen proofs to address the issue of the PMA. (The parties have not cited to their closing arguments nor can they be located in the record.) The court granted the motion to reopen proofs and set the matter for a hearing.

¶ 37 A hearing took place on July 8, 2019, at which Lisa testified. Lisa was shown the PMA, which was designated exhibit No. 30, and she confirmed that her signature appeared on page 22. Lisa's counsel asked that the PMA be admitted into evidence. Robert's counsel stated: "Judge, I would object. I would like to cross examine." The court responded: "Subject to cross-examination." After asking additional questions about the PMA, Lisa's counsel began to inquire about an additional document. The court asked whether counsel was going to "tie this all together into the [PMA]." The following colloquy occurred:

"MR. DUTHALER: No, your Honor. I thought you had reopened [the proofs] and you just stated some concerns.

THE COURT: No, there was an issue in the closing arguments both [*sic*] raised by Mr. Valenti, and then you said with regard to the [PMA], if there is a question as to whether the [PMA] is valid or not, I want to reopen proofs with regard to the [PMA].

I have already heard everything that I needed to hear with regard to the trial portion of it. This is merely to go into the validity of the [PMA].

MR. DUTHALER: Well, the Court has already ruled on the validity of the [PMA].

THE COURT: Understood. You asked to reopen proofs with regard to the [PMA].

MR. DUTHALER: Your Honor, this is all my fault. I misunderstood it.

THE COURT: If you are where you want to be with regard to the [PMA], then I will turn it over to Mr. Valenti. Now, I am going to, since Mr. Valenti raised issues about the [PMA] as well, I am going to let him examine as if it was an adverse examination and not limit him to the scope of your examination."

Thereafter, Lisa's counsel asked a few more questions, and attorney Valenti cross-examined her. During the course of the cross-examination, Lisa's counsel reminded the court that it had already ruled, on January 19, that the PMA was valid and enforceable. The court stated: "The Court will hear what it hears. I will give everything the weight that I think it deserves, and *** I am cognizant of my previous rulings in this case and will take judicial notice of all the orders I have issued." At the close of testimony, the court stated that it would allow the parties until the end of the week to supplement their closing arguments and thereafter the court would issue its ruling.

¶ 38 On July 22, 2019, the trial court issued its written judgment of dissolution. With respect to the PMA, the court stated:

> "The Parties entered into a Premarital Agreement, hereinafter referred to as the PMA, on October 23, 2005. The Court heard the testimony of Lisa that the Parties entered into the agreement freely and voluntarily after having had the advice of counsel. The Court received the agreement into evidence as Plaintiff's Exhibit 30. Reviewing the document, the Court notes that the parties have both signed the document, have both disclosed their assets and liabilities in Exhibits A and B attached thereto, and have included the certifications of their respective attorneys, stating that their clients had been fully advised of their rights, obligations and the legal import of the agreement. As such, [t]he Court finds the PMA to be valid and enforceable."

With respect to child support, the court stated:

> "The Court previously awarded [Lisa] $1,450.99 per month in temporary child support. This amount was determined to be fair and equitable pursuant to the statute. The Court finds that this amount is fair and reasonable given the age and needs of the child, as well as the lifestyle the child would have enjoyed had the divorce not occurred. [Robert] is ordered to pay this amount together with any arrearages that have accrued since the entry of the temporary order. [Lisa] is granted leave to establish an automatic payment system from [Robert's] 'frozen' Chase account(s)."

¶ 39 Robert filed a motion for reconsideration, arguing as follows. First, Robert argued that the trial court erred in denying his motion to bifurcate, because it denied him his fundamental right to due process. Second, with respect to the trial court's award of $1450 in monthly child support, Robert argued that "there was no testimony or properly admitted evidence that would establish in [*sic*] award in this amount." Third, Robert argued that despite Lisa filing no motion to reconsider and the absence of "any additional facts presented *** to warrant reopening proofs," the court "on

its own motion reopened the proofs to allow admission of a [PMA].” Fourth, Robert argued that the parties’ Hinsdale residence was marital property and, therefore, the trial court erred by awarding Lisa all the proceeds from the sale of the residence as her non-marital property.

¶ 40 In response, Lisa argued, *inter alia*, that Robert waived his right to challenge the trial court’s ruling on the motion to bifurcate. With respect to child support, Lisa argued:

> “The original child support order was entered on September 26, 2018, *** during a pretrial conference with [Lisa’s] attorney, [Robert’s] then-attorney, Nicholas Lagattuta[,] and the Court. The Court inferred that [Robert’s] incarceration was a type of ‘voluntary unemployment’ and ordered that [Robert] pay $1200 in child support and contribute to the minor child’s portion of the health insurance premium paid by [Lisa] for a total support obligation of pay $1450.99 per month. The amount was based upon the monthly income being received by [Robert] from payments made to his business accounts.”

¶ 41 With respect to the PMA, Lisa argued that the court properly reopened proofs to allow the PMA to be entered into evidence, as she requested it as part of her findings of facts that she submitted to the court. She attached a portion of her findings of facts to her response, wherein she requested that the court “re-open proofs on this matter and allow the [PMA] to be filed a ‘second time.’ ” With respect to the Hinsdale residence, Lisa pointed to testimony demonstrating that the parties’ intent was to keep the home in Lisa’s name.

¶ 42 The trial court denied the motion for reconsideration, and this timely appeal followed.

¶ 43 II. ANALYSIS

¶ 44 A. Motion to Bifurcate Judgment

¶ 45 Robert first argues that the trial court erred in denying his motion to bifurcate judgment, because the trial court failed to consider his incarceration, which he claims would preclude his payment of any prospective child support as it had his payment of previously ordered support.

¶ 46 Section 401(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/401(b) (West 2018)) provides:

> "(b) Judgment shall not be entered unless, to the extent it has jurisdiction to do so, the court has considered, approved, reserved or made provision for the allocation of parental responsibilities, the support of any child of the marriage entitled to support, the maintenance of either spouse and the disposition of property. The court shall enter a judgment for dissolution that reserves any of these issues either upon (i) agreement of the parties, or (ii) *motion of either party and a finding by the court that appropriate circumstances exist*." (Emphasis added.)

In *In re Marriage of Cohn*, 93 Ill. 2d 190 (1982), the supreme court set forth the following nonexhaustive list of "appropriate circumstances" for entering a judgment of dissolution while reserving questions of child custody, support, maintenance, or property distribution: "where the court does not have *in personam* jurisdiction over the respondent; where a party is unable to pay child support or maintenance if so ordered; where the court has set aside an adequate fund for child support pursuant to section 503(d) of the Act; or where the parties' child or children do not reside with either parent." *Id.* at 199. Later, the supreme court held that bifurcation is also warranted where the circumstances are "of the same caliber as those enumerated in *Cohn*." *In re Marriage of Bogan*, 116 Ill. 2d 72, 80 (1986) (husband's argument that the unsettled claim for dissolution impacted his ability to perform social functions expected by his employer did not state an appropriate basis for bifurcation). This court will not reverse a trial court's ruling on a motion to

bifurcate judgment absent an abuse of discretion. *In re Marriage of DT Wade*, 408 Ill. App. 3d 775, 778 (2011). "A trial court abuses its discretion only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005).

¶ 47 First, Robert has forfeited his argument that the trial court abused its discretion by failing to consider Robert's alleged inability to pay child support when ruling on Robert's motion to bifurcate. Robert never presented his alleged inability to pay child support as a basis for bifurcation in his original motion, the hearing on his motion, or his motion for reconsideration. See *Bank of New York Mellon v. Rogers*, 2016 IL App (2d) 150712, ¶ 72 ("It is well-settled that issues not raised in the trial court are forfeited and may not be raised for the first time on appeal."). Instead, Robert argued in his motion to bifurcate that he "is under a legal disability which warrants a bifurcation of this matter," that "the only issues remaining between the parties are financial in nature given that the issues relating to the minor child have been resolved and the grounds are not disputed," and that he "has a right to defend himself *** and is unable to do so given the rules of the Bureau of Prisons." His arguments at the hearing were consistent with those raised in his motion. He argued that the Bureau of Prisons refused to release him and that the only issues remaining were financial. When the trial court opined during the hearing that Robert did not have an absolute right to be present, attorney Valenti agreed that "there is no absolute right." In his motion to reconsider, Robert argued only that the trial court's denial of his motion to bifurcate deprived him of "his Fourth Amendment Rights of Due Process." Accordingly, he has forfeited his argument that his alleged inability to pay child support, if so ordered, required bifurcation.

¶ 48 Even if we were to consider Robert's argument, he cites no evidence of an inability to pay child support during his incarceration. "It is well settled that there is no presumption of abuse of discretion by a trial court; therefore, the burden is upon the appellant here to show clearly an abuse

of discretion." *Bicek v. Quitter*, 38 Ill. App. 3d 1027, 1030 (1976). The mere fact that a party is incarcerated does not preclude the trial court from ordering that party to pay child support. See *In re Marriage of Hari*, 345 Ill. App. 3d 1116, 1121 (2004). Indeed, the evidence refutes Robert's argument that he was unable to pay child support. Lisa's petition for temporary child support alleged that, "by agreement of the attorneys for both Parties and the U.S. Attorneys' office," she had been receiving $1500 per month for " 'child expenses' " and $1000 per month for health insurance for her and the parties' child. In his response, Robert neither admitted nor denied this allegation. On September 26, 2018, the trial court, "being fully advised" and "[o]ver strenuous objection" from Robert's counsel, ordered Robert "to pay [Lisa] "$1200.00 per month for child support plus the minor child's portion of the health insurance premium." Lisa alleged in her petition for rule to show cause that the parties agreed on September 28, 2018, that the child's portion of health insurance was $250.99. On February 28, 2019, the court entered an order "freez[ing]" Robert's bank accounts "with the exception of the monthly child support payment of $1450.99." The record does not contain a report of proceedings for either the September 28, 2018, or the February 28, 2019, proceeding.

> "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial 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." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391–92 (1984).

In the absence of a complete record, especially when the abuse-of- discretion standard applies, we presume that the trial court acted properly. *Id.* at 392. Accordingly, based on the court's orders, we presume Robert had the ability to pay child support.

¶ 49 Robert's reliance on *In re Marriage of Blount*, 197 Ill. App. 3d 816, 820 (1990), does not warrant a different conclusion. He asserts that, based on *Blount*, bifurcation was warranted here because "the parties held largely separate assets and had a premarital agreement governing the disposition of marital property." *Blount* is readily distinguishable. In that case, the court considered relevant how a bifurcated judgment would "benefit *** the emotional status of an elderly, very ill woman" whose mental condition was aggravated by her fear that her husband would obtain some of her assets on her death. *Id.* Such circumstances are not present in this case.

¶ 50 Similarly distinguishable is *Copeland v. McLean*, 327 Ill. App. 3d 855, 865-67 (2002), where the court found that bifurcation was appropriate because the petitioner was in the terminal stage of her life, she wished to dispose of her half of her marital assets according to her wishes, and young children were not involved. Here, in denying the motion to bifurcate, the court noted that the matter had "been continued now by several other counsel" and that it wanted "to get this thing done for [Lisa], for [Lisa's] son, and for [Robert]." Thus, it is clear the court found that bifurcation was not in the best interest of the parties. As the finder of fact, the court was in the best position to make that determination.

¶ 51 In the last paragraph of his argument, Robert asserts that, in refusing to bifurcate the trial, the trial court deprived him of his property rights without due process. In addition to the fact that Robert conceded at the hearing that "there is no absolute right" to be present, Robert has forfeited his due-process argument on appeal by failing to cite any authority to support it. See Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018) (failure to cite authority in support of appellate argument waives or forfeits the contention on appeal).

¶ 52 Accordingly, we hold that we have no basis upon which to conclude that the trial court abused its discretion in denying Robert's motion to bifurcate judgment.

¶ 53 B. Property Division

¶ 54 Robert next argues that the trial court erred in its property division. The trial court's distribution of marital property is reviewed under the abuse-of-discretion standard. See *In re Marriage of Hamilton*, 2019 IL App (5th) 170295, ¶ 34.

¶ 55 The sole basis for Robert's claim of error is that the court's ruling was based on the parties' PMA, which, according to Robert, was never admitted into evidence. Robert argues that "the [PMA] was never admitted into evidence during the trial or the hearing to re-open proofs, and was never a part of the common law record, as it appears nowhere within the record, despite multiple opportunities for [Lisa] to place the [PMA] in the record." Thus, according to Robert, since the PMA was never admitted, the court's division of property based thereon was an abuse of discretion. Robert's argument is forfeited and otherwise meritless.

¶ 56 First, Robert's argument that the property division was improperly based on an unadmitted PMA has been forfeited because he did not raise the issue below. See *Rogers*, 2016 IL App (2d) 150712, ¶ 72 ("It is well-settled that issues not raised in the trial court are forfeited and may not be raised for the first time on appeal.") In his motion for reconsideration, the only argument Robert raised regarding property concerned the proceeds of the sale of the parties' Hinsdale residence. Moreover, with respect to the PMA, Robert argued not that the PMA was never admitted into evidence but rather that the court erred in reopening proofs "to allow admission of" the PMA. Thus, Robert seemed to concede in his motion to reconsider that the PMA *was* admitted.

¶ 57 Indeed, the record shows that the PMA was a made part of the record. On October 23, 2018, Robert filed a motion for declaratory judgment, asking the court to declare the PMA entered into by the parties to be invalid, unenforceable, and unconscionable. In paragraph two of the motion, Robert asserted that the parties entered into the PMA on October 23, 2005, and stated that

the PMA was "attached hereto as 'EXHIBIT A' and made part hereof." In her response, Lisa admitted the allegations in paragraph two. To be sure, the PMA is not attached to the motion in the common law record. However, on January 7, 2019, the trial court granted Robert's request to withdraw his motion for declaratory judgment and found that the "[PMA] entered into between the parties shall be upheld as valid and enforceable." There is no report of proceedings in the record from that date. However, when later discussing whether the PMA was made a part of the record at that time, the court commented: "[H]ow did I find it valid without something in front of me? I usually don't do that." Thus, it appears as if the PMA was before the court but was inexplicably not made a part of the trial court record.

¶ 58 In any event, the PMA was admitted at the hearing to reopen proofs, despite Robert's current claim to the contrary. During the hearing, Lisa's counsel asked that the PMA be admitted into evidence. Robert's counsel stated: "Judge, I would object. I would like to cross examine." The court responded: "Subject to cross-examination." Robert conducted his examination and raised no objection to the document's admission thereafter. Robert argues that the PMA was in fact not admitted, because the trial court never expressly stated that it was. However, as Lisa points out, there are many examples of the court's intermittent use of "[s]ubject to cross, it's admitted" and simply "[s]ubject to cross." Indeed, Robert's counsel often simply stated, "[s]ubject to cross" when Lisa's counsel asked for a document to be admitted. Nevertheless, the court expressly stated in its written judgment of dissolution that it "received the [PMA] into evidence as Plaintiff's Exhibit 30."

¶ 59 (We note that the parties have supplemented the record on appeal with the PMA.)

¶ 60 Accordingly, we have no basis upon which to conclude that the trial court abused its discretion in its property division.

¶ 61 C. Child Support

¶ 62 Robert's final argument is that the trial court erred in its award of child support because it "failed to provide specific findings of fact supporting its conformity to or deviation from the statutory support guidelines" as required by the Act. He asserts that the trial court merely adopted an earlier order of support, which likewise did not contain the requisite specific findings of fact.

¶ 63 "The establishment of child support lies within the discretion of the trial court." *In re Marriage of Severino*, 298 Ill. App. 3d 224, 229 (1998). " 'An abuse of discretion occurs only when no reasonable person would take the view adopted by the trial court.' " *Id.* (quoting *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 815 (1992)).

¶ 64 Section 505(a)(1.5) of the Act sets forth the computations for determining the basic child support obligation. 750 ILCS 5/505(a)(1.5) (West 2018). Under section 505(a)(2) of the Act, "[t]he court shall determine child support in each case by applying the child support guidelines unless the court makes a finding that application of the guidelines would be inappropriate" after considering the best interest of the child and any pertinent evidence. *Id.* § 505(a)(2). Under section 505(a)(3.3) of the Act, there is a rebuttable presumption that the amount of child support that would result from applying the guidelines is "the correct amount of child support." *Id.* § 505(a)(3.3).

¶ 65 In support of his argument that the trial court failed to comply with the Act, Robert directs us to section 505(a)(3.4) of the Act, which provides as follows:

> "Deviation factors. In any action to establish or modify child support, whether pursuant to a temporary or final administrative or court order, the child support guidelines shall be used as a rebuttable presumption for the establishment or modification of the amount of child support. The court may deviate from the child support guidelines if the application would be inequitable, unjust, or inappropriate. *Any deviation from the guidelines shall be*

> *accompanied by written findings by the court specifying the reasons for the deviation and the presumed amount under the child support guidelines without a deviation*." (Emphasis added.) *Id.* § 505(a)(3.4).

He also cites section 505(a)(3.3b) of the Act which provides:

> "Zero dollar child support order. For parents with no gross income, who receive only means-tested assistance, or who cannot work due to a medically proven disability, *incarceration*, or institutionalization, there is a rebuttable presumption that the $40 per month minimum support order is inapplicable and *a zero dollar order shall be entered*." (Emphases added.) *Id.* § 505(a)(3.3b).

According to Robert, because he was incarcerated, the court was required to enter a zero-dollar order under section 505(a)(3.3b) of the Act and the court abused its discretion in failing to do so. In addition, Robert argues that the court, in entering its order, erred in failing to specify its reasons for deviating from the zero-dollar award and also in failing to state the presumed amount of child support without a deviation, as required under section 505(a)(3.4) of the Act.

¶ 66 In response, Lisa directs our attention to section 505(a)(5) of the Act, which provides:

> "If the net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case. The final order in all cases shall state the support level in dollar amounts." *Id.* § 505(a)(5).

According to Lisa, because the trial court was without credible evidence of Robert's income, the court was compelled to make an award of child support in a reasonable amount.

¶ 67 We agree with Lisa. First, we note that a zero-dollar award under section 505(a)(3.3b) of the Act is warranted only for "parents with no gross income." *Id.* § 505(a)(3.3b). Robert claims that he was entitled to a zero-dollar award due to incarceration, but he does not provide us with a

citation to anything in the record showing that he had no gross income. "It is well settled that there is no presumption of abuse of discretion by a trial court; therefore, the burden is upon the appellant here to show clearly an abuse of discretion." *Bicek*, 38 Ill. App. 3d at 1030.

¶ 68 Indeed, the evidence at trial suggests that Robert had business income, as the temporary child support payments were being paid out of Robert's business accounts. See 750 ILCS 5/505(a)(3.1) (West 2018) (when a source of a parent's income comes from the operation of a business, the business net income is considered part of the parent's income). In Lisa's petition for temporary child support, she alleged that, "by agreement of the attorneys for both Parties and the U.S. Attorneys' office," she had been receiving $1500 per month " 'child expenses' " and $1000 per month for health insurance for her and the parties' child and that these amounts were coming from "*the continuing monthly income [Robert] was receiving into his business accounts*." (Emphasis added.) On September 26, 2018, the trial court, "being fully advised" and "[o]ver strenuous objection" from Robert's counsel, ordered Robert "to pay [Lisa] "$1200.00 per month for child support plus the minor child's portion of the health insurance premium." Lisa alleged in her petition for rule to show cause that the parties agreed on September 28, 2018, that the child's portion of health insurance was $250.99. On February 28, 2019, the court entered an order "freez[ing]" Robert's bank accounts "with the exception of the monthly child support payment of $1450.99." As we noted above, we presume that these orders were entered in conformity with the law, because the record does not contain the relevant reports of proceeding. At the trial, Lisa was asked whether she would be "satisfied" if the court directed Robert to pay $1450.99 in monthly child support and ordered the payments to be "made out of the business accounts of [Robert]." Thus, given that Robert has failed to establish that he had no income, which is his burden, the court did not abuse its discretion in failing to enter a zero-dollar award.

¶ 69 We also find no abuse of discretion in the trial court's failure to comply with section 505(a)(3.4) of the Act. To be sure, the court did not set forth the "presumed amount under the child support guidelines without a deviation." 750 ILCS 5/505(a)(3.4) (West 2018). However, to do so, the court needed to determine Robert's net income. Here, the court did not make any express findings as to Robert's net income, as there did not seem to be sufficient evidence presented at the hearing to do so. Although the court asked the parties to submit closing arguments and findings of facts, neither party cited to any such documents in their briefs, and we are unable to locate them in the record. As we noted in *In re Marriage of Severino*, 298 Ill. App. 3d 224, 230-31 (1998), "[i]n cases where the trial court is unable to determine the net income of a party, it is illogical to assert that the trial court must make express findings for varying the child support award from a percentage recommended by statute." We held that, instead, section 505(a)(5), relied on here by Lisa, merely requires the trial court "to set child support in an amount reasonable in a particular case and express that award of support in a dollar amount." *Id.* at 231. The court did so here. The court's award was based on its previous child support order, which it stated was "determined to be fair and equitable pursuant to the statute." The court stated further that it found the amount to be "fair and reasonable given the age and needs of the child, as well as the lifestyle the child would have enjoyed had the divorce not occurred." Robert has failed to establish that the court's order was an abuse of discretion.

¶ 70 III. CONCLUSION

¶ 71 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 72 Affirmed.

No. 2-19-0819

MEMORANDUM & CHECKLIST

Re: No. 2-19-0819, *IRMO Allegra*

To: Justice Hutchinson, Presiding Justice Bridges, and Justice Zenoff

From: Janine Farrell

Report Date: 1/6/2021

Release Date: October 1, 2020

Trial Judge: Du Page County
Judge Robert E. Douglas

A proposed disposition is attached for your consideration.

Research Process Checklist:

12/2/2020 — [JTF] First draft sent to MK with Checklist attached as last page of disposition.
12/11/2020 — [MK] MK sends edits back to attorney with "Compare" doc
12/14/2020 — [MK] Attorney resolves MK-edits & notifies MK
12/14/2020 — [MK] MK sends draft to Barb for cite check & cc's attorney
[This is when "pending" clock starts]
1/1/2021 — [BEJ] Barb cite checks, returns to MK
1/4/2021 — [BEJ] Cite-check approved by MK & Barb sends to attorney
1/5/2021 — [JTF] Attorney enters cite-check edits & reviews final draft. Sends to Barb.
1/6/2021 — [BEJ] Format check complete. Sends to Greg.
Click or tap to enter a date. — [Initials] Checklist & MK Header stripped from disposition.
Case uploaded to C-Track.