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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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<i>In re</i> MARRIAGE OF NNENA UGWU-UCHE	)	
	)	Appeal from the Circuit Court
Petitioner-Appellee,	)	of Cook County.
	)	
and	)	No. 14 D 8723
	)	
UGWU UCHE,	)	The Honorable
	)	Robert W. Johnson,
Respondent-Appellant.	)	Judge, presiding.

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JUSTICE HYMAN delivered the judgment of the court.  
Justices Mason and Pucinski concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* In marital dissolution proceeding, the trial court did not err in denying respondent's emergency petition for a temporary restraining order on the sale of property acquired before marriage to meet support obligations.
- ¶ 2 After 15 years of marriage, Nnena Ugwu-Uche filed a petition for dissolution of marriage from Ugwu Uche. When Ugwu fell behind in court ordered support payments, Nnena filed a petition for temporary relief, asking the court to order the sale of property in Chicago. Ugwu argued the property was nonmarital having been acquired by him before the marriage, and the

trial court could not order its sale. The trial court granted Nnena's petition. When Ugwu failed to cooperate in selling the property, Nnena filed a motion to enforce the order for sale, which the trial court granted. Ugwu filed an emergency petition for a temporary restraining order and an injunction to stop Nnena from selling the property. The trial court denied the emergency petition.

¶ 3 Ugwu filed an interlocutory appeal arguing the trial court erred in denying his emergency petition. We affirm. Ugwu has failed to present a sufficient record showing the trial court erred in ordering the property be sold, and the law requires us to presume that the ruling entered by the trial court conforms to the law and has a sufficient factual basis.

¶ 4 Background

¶ 5 The parties were married on 1999, in Lagos, Nigeria, and have four children. Ugwu was involved in buying and selling real estate, and the couple owns more than 60 parcels of marital property. Before the marriage, Ugwu acquired property at 1465-1469 S. Michigan Avenue, which included two six unit buildings and a parking lot.

¶ 6 In September 2014, Nnena filed a petition for dissolution of marriage. The trial court entered a temporary support order, and when Ugwu failed to comply, he was committed to Cook County Jail until he purged the contempt. When Ugwu continued to fail to make timely support payments, Nnena filed a petition for temporary relief, asking the trial court to order the sale of the Michigan Avenue property, as well as the former marital home on Wentworth Avenue, and other properties. (Only the Michigan Avenue property is relevant to this appeal.)

¶ 7 After a hearing, the trial court granted Nnena's petition and ordered that the property be sold. (A transcript of the hearing is not in the record.) Later, the trial court entered an order appointing a real estate broker and ordering Ugwu to execute a quitclaim deed, which he did.



¶ 13 Ugwu contends the trial court erred in denying his emergency petition for a temporary restraining order and injunction because the Michigan Avenue property is nonmarital property and the trial court did not have authority to order that it be sold.

¶ 14 Nnena did not file an appellee brief. It is not our role to serve as an advocate for the appellee or search the record for reasons to sustain the trial court's judgment. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). But, where the record is straightforward and the claimed errors can be comfortably decided without the aid of an appellee's brief, the court of review should decide the appeal on the merits. *Id.* The record is not lengthy, and the issue on appeal is not complicated: Did the trial court abuse its discretion in denying Ugwu's emergency petition? Accordingly, we address the issues raised in the interlocutory appeal.

¶ 15 Preliminary Injunction

¶ 16 A party seeking a preliminary injunction must establish "(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill.2d 52, 62 (2006). The moving party must raise a "fair question" as to each required element to obtain an injunction. *Clinton Landfill, Inc. v. Mahomet Valley Water Authority*, 406 Ill.App.3d 374, 378 (2010). The decision to grant or deny a preliminary injunction rests within the sound discretion of the trial court. *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201, ¶ 32. The trial court abuses its discretion only when its ruling is arbitrary, fanciful, or unreasonable. *World Painting Co., LLC v. Costigan*, 2012 IL App (4th) 110869, ¶ 12. Absent an abuse of discretion, the trial court's decision will not be disturbed on review. *Makindu*, 2015 IL App (2d) 141201, ¶ 32. "Stated differently, the only question before the court

of review is whether there was a sufficient showing to sustain the order of the trial court.” *Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & Western Railway Co.*, 195 Ill. 2d 356, 366 (2001).

¶ 17 Ugwu argues he has a clearly ascertained right to the Michigan Avenue property because he purchased it before the marriage, making it nonmarital property. He also asserts he will suffer irreparable injury if the property is sold because he will lose its value and the income it generates, which cannot be replaced. He argues the property has not been appraised, and it is impossible to provide a legal remedy if it is sold because its value is unknown. Ugwu asserts that the *status quo* should be maintained as to the property until trial and that other property could be sold to meet his support obligations without any harm to Nnena.

¶ 18 **Disposition of Property**

¶ 19 The disposition of property in a dissolution of marriage proceeding is governed by section 503 of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/503 (West 2016)). Under the Act, all property acquired by either spouse after the marriage and before a judgment of dissolution of marriage or declaration of invalidity of marriage, including non-marital property transferred into some form of co-ownership between the spouses, is presumed to be marital property. 750 ILCS 5/503(b)(1) (West 2016). Assets acquired before marriage, but in contemplation of marriage are to be considered marital property. *In re Marriage of Sanfratello*, 393 Ill.App.3d 641, 651 (2009). In addition, nonmarital property may be transmuted to marital property by placing the property in joint tenancy with a spouse, which raises a presumption that a gift was made to the marital estate. *In re Marriage of Rink*, 136 Ill.App.3d 252, 257 (1985). “The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (a)” of section 503 of the Act. 750 ILCS 5/503(b)(1) (West 2010).

The party claiming that the property is nonmarital has the burden of rebutting the presumption by clear and convincing evidence, and any doubts as to the classification of property will be resolved in favor of finding that the property is marital property. *In re Marriage of Dhillon*, 2014 IL App (3d) 130653, ¶ 24.

¶ 20 Section 503(a) states that “property acquired before the marriage, except as it relates to retirement plans that may have both marital and non-marital characteristics” is non-marital property. 750 ILCS 5/503(a)(6) (West 2016). In a proceeding for dissolution of marriage, “the court shall assign each spouse’s non-marital property to that spouse” 750 ILCS 5/503(d) (West 2016). If the property is marital, the trial court may order that it be sold and its proceeds be applied as determined by the court. 750 ILCS 5/503(i) (West 2016).

¶ 21 Ugwu argues that because he acquired the Michigan Avenue property before the marriage it is nonmarital property and the court did not have authority to order that it be sold. He contends the trial court did not address whether the property was marital or nonmarital and that until that decision is made at trial, his interest should be protected. He acknowledges he quitclaimed the property to Nnena but asserts he acted under duress because he was in jail and seeking to purge his indirect civil contempt. In sum, he asserts the transfer did not convert the property from nonmarital to marital property, and the court should have granted his motion for emergency relief.

¶ 22 An appellant has the burden to present a sufficiently complete record to support a claim of error. *Webster v. Hartman*, 195 Ill. 2d 426, 432 (2001) (citing *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391-92 (1984)). Indeed, “[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.” *Foutch*, 99 Ill. 2d at 391. Where the issue relates to the conduct of a

hearing or proceeding, review requires a report or record of the proceeding. *Webster*, 195 Ill. 2d at 432. Without that record, we presume that the ruling entered by the trial court conforms to the law and has a sufficient factual basis. *Foutch*, 99 Ill. 2d at 391-92. “Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.” *Id.* at 392. Absent the transcript, there is nothing to determine whether the trial court abused its discretion. See *id.*

¶ 23 After a hearing, the trial court granted Nnena’s petition to sell the Michigan Avenue property. Ugwu contends that at that hearing, the trial court did not determine whether the property was marital or nonmarital and exceeded its authority in ordering that the property be sold. But, Ugwu submitted no report of those proceedings or a bystander’s report. See Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005) (setting forth process for providing report of proceeding when no court reporter present). Nothing in the record shows whether the court made a determination about the character of the Michigan Avenue property or why the court ordered that it be sold. Even assuming, as Ugwu contends, that the Michigan Avenue property was nonmarital at one time, the trial court may have determined it was transmuted into marital property due to subsequent transactions. The record is silent as to the basis for the court’s order of sale. In this situation, we presume the order entered by the trial court conforms to the law and has a sufficient factual predicate. *Foutch*, 99 Ill. 2d at 391-92.

¶ 24 If we assume, as we must, that the trial court properly entered an order to sell the property, then we also conclude that the trial court properly denied Ugwu’s emergency petition for a preliminary injunction on the order of sale.

¶ 25 Affirmed.