

ZUBAIDA KHAN

v.

KAREN J. KHAN

Argued April 15, 2009

Decided April 30, 2009

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Zubaida Khan appeals from a judgment entered in the District Court (York, *Brennan, J.*) in favor of Karen J. Khan.

Zubaida contends that the doctrine of collateral estoppel did not apply in this case, *see Curtis v. Allstate Ins. Co.*, 2002 ME 9, ¶ 23 n.6, 787 A.2d 760, 767, nor did that of claim preclusion, *see Portland Water Dist. v. Town of Standish*, 2008 ME 23, ¶¶ 8-9, 940 A.2d 1097, 1099-1100. To the extent that the court applied either doctrine to support its decision, however, such error was harmless. *See* M.R. Civ. P. 61. In addressing Karen's counterclaim, the court awarded Zubaida's interest in the York residence to Karen, expressly for the purpose of offsetting Karen's loss of the accounts awarded to her as her share of marital property in a prior divorce judgment, but which were transferred or dissipated for Zubaida's use. *See* 4 M.R.S. § 152(5) (2008). Because Zubaida failed to provide a record on appeal that included a transcript, or a statement in lieu thereof, of the trial court proceedings, *see* M.R. App. P. 5(d), we must assume that the evidence supporting the court's explicit and implicit factual findings was presented at trial and that the evidence supported the portion of the court's judgment that was based on that evidence. *See Burr v. Jordan*, 2008 ME 87, ¶¶ 1, 9, 948 A.2d 582, 583, 585; *Mehlhorn v. Derby*, 2006 ME 110, ¶ 8 n.3, 905 A.2d 290, 292; *see also Ginn v. Kelley Pontiac-Mazda, Inc.*, 2004 ME 1, ¶ 15, 841 A.2d 785, 788 (stating that an

appellant “has the burden of providing a sufficient record that allows adequate consideration of [her] arguments” (quotation marks omitted). The record evidence that we must assume supports the court’s findings and conclusions concerning the equitable award also supports the court’s judgment against Zubaida on her complaint.

Additionally, contrary to Zubaida’s contentions, the court did not err in holding that the Improvident Transfer Act (ITA), 33 M.R.S. §§ 1021-1025 (2008), was inapplicable in this case. Not only was Zubaida’s ITA claim time-barred, *see Estate of Miller*, 2008 ME 176, ¶¶ 23-26, 960 A.2d 1140, 1145-46, but, regardless, she failed, as a matter of law, to establish a prima facie case on the merits under the ITA. *See* 33 M.R.S. § 1022.¹

The entry is:

Judgment affirmed.

Attorney for Zubaida Khan:

Brian R. Barrington, Esq. (orally)
The Coolidge Law Firm, PLLC
PO Box 271
Somersworth, New Hampshire 03878

Attorney for Karen Khan:

James B. Bartlett, Esq. (orally)
PO Box 836
York, Maine 03909-0836

¹ We decline to address Zubaida’s remaining argument on appeal as it lacks merit and was barely briefed. *See Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290, 293 (stating that an issue “adverted to in a perfunctory manner . . . [is] deemed waived” (quotation marks omitted)).