2011 IL App (1st) 102344-U

THIRD DIVISION
October 26, 2011

No. 1-10-2344

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KAREN PALLANTI, (n/k/a KAREN PETTIT),	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 95 D 9864
	)	
RUDOLPH PALLANTI,	)	
	)	Honorable Jordan Kaplan,
Defendant-Appellee.	)	Judge Presiding.

Justice Murphy delivered the judgment of the court.
Justice Neville and Justice Salone, concurred in the judgment.

O R D E R

¶ 1 *HELD*: Where Judgment for Dissolution incorporates Marital Settlement Agreement entered into by parties that specifically limits the marital portion of pension benefits to those benefits accrued solely during the marriage and excludes any increase in benefits subsequent to date of judgment of dissolution, the trial court did not err in rejecting the reserved jurisdiction approach of *In re Marriage of Hunt*, 78 Ill. App. 3d 653 (1979), instead accepting a calculation based on the language of the parties' agreement.

¶ 2 *HELD*: Where trial court accepted pension benefit apportionment consistent with the rights and obligations that vested when the Judgment of Dissolution and Marital Settlement Agreement became final, it did not abuse its discretion in denying plaintiff's motion for reconsideration arguing that the trial court failed to follow the reserved

jurisdiction method.

¶ 3 A judgment for dissolution was granted to the parties in the instant matter on September 19, 1997, including a Marital Settlement Agreement (MSA). On September 23, 2008, Plaintiff, Karen Pettit, filed a post-decree petition for entry of qualified domestic relations order (QDRO) that is the subject of this appeal. On January 5, 2010, the trial court entered an order: (1) accepting the pension evaluation of defendant, Rudolph Pallanti, as of the date of the entry of the judgment of dissolution; and (2) that plaintiff was not entitled to any pension refund received by defendant after the entry of judgment of dissolution. Plaintiff moved for reconsideration of these two findings. On July 14, 2010, the trial court denied plaintiff's motion and ordered payment of $46,432.31 to plaintiff as her total portion of defendant's pension.

¶ 4 Plaintiff now appeals, asserting that the trial court abused its discretion in calculating and ordering the division of defendant's retirement benefits by: (1) enforcing the pension provision of the MSA without following the requirements of the Illinois Pension Code and Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago; (2) allowing defendant to withdraw his irrevocable consent to the issuance of the QDRO; (3) utilizing a pension evaluation prepared by WFA Econometric Corporation (WFA Report); (4) utilizing the immediate offset approach and not the reserved jurisdiction approach to dividing the retirement benefits; (5) failing to award plaintiff interest on her portion of defendant's retirement assets; (6) failing to include defendant's early retirement and purchase of additional years' service; (7) failing to award any portion of spousal survivorship benefits; and (8) using the WFA Report. Plaintiff also argues that the trial court erred in denying her motion for reconsideration. For the following reasons, we affirm the judgment of the trial court.

¶ 5 I. BACKGROUND

¶ 6 On September 19, 1997, the trial court granted a judgment for dissolution to the parties. Included in the judgment was a MSA entered between the parties. At issue in the instant matter is section 13.1 of the MSA which provides for the apportionment of defendant's pension funds. Section 13.1 of the MSA provides:

¶ 7 "PENSION: The Parties covenant and agree that [plaintiff] shall receive sixty percent (60%) of the marital portion of the [defendant]'s Pension Plan with the Laborers' and Retirement Board Employees' Annuity and Benefit Fund of Chicago, through his employment at the City of Chicago, Illinois, the marital portion being benefits which accrued solely between the first day of the marriage, being April 30, 1983, and the last day of the marriage, being the date of the entry of any Judgment for Dissolution of Marriage herein. The parties acknowledge that [defendant]'s first day of service with the City of Chicago was on October 2, 1973. Any benefits accruing, in whole or in part, either before the date of marriage or after the date of entry of the Judgment for Dissolution of Marriage shall be the sole and separate property of [defendant]. Any new benefit(s) which accrue(s) or occur(s) because of any increase in rank, station, position of authority and/or increase in rank, station, position of authority and/or increase in salary occurring after the entry of Judgment for Dissolution of Marriage shall be the sole property of [defendant].

¶ 8 The Parties recognize that at the present time, there is no legal instrument available to automatically distribute a municipal pension. Therefore, the Parties

request that this Court retain jurisdiction of this cause for implementation of future, retroactive legislation, whether by QDRO/QUILDRO, Order of Withholding, or any other method so developed to allow for the division of municipal pension and disability benefits by the employer or pension administrative office with payments being made directly to each party.

¶ 9 Until such new legislation occurs, and at such time as distribution of any pension or disability benefits begins[,] the Parties recognize that all funds will be paid to [defendant] and all taxes thereon shall be incurred at [defendant]'s tax rates. The Parties agree that from [plaintiff]'s gross award, [plaintiff] shall be solely responsible to pay the taxes thereon and those taxes shall be the proportionate percentage of taxes due and owing on her share of the marital portion of the pension distribution award. [Plaintiff] shall not have the right to benefit from any tax deductions or other tax savings available to [defendant]. [Plaintiff] shall not suffer any detriment for any higher tax rates incurred by [defendant] due to earning by him beyond the gross marital portion of the pension or disability award. The Parties shall cooperate in preparing and filing such tax forms to implement this provision as may be required by the State or Federal revenue Services.

¶ 10 Within seven calendar days from the date [defendant] receives marital pension or disability benefits, it shall be his responsibility to send the appropriate portion to [plaintiff]. [Plaintiff] shall have the responsibility to keep [defendant] appraised [*sic*] of her current mailing address for receiving said marital pension or

disability benefits."

¶ 11 On July 1, 2005, defendant retired from his employment with the City of Chicago and began receiving funds from his defined benefit plan with the Laborers' and Retirement Board Employee Fund of Chicago (LABF). Defendant received a spousal contribution payment of $28,325.60 because he was not married at the time of his retirement. Since the time of his retirement, defendant has received retirement benefits of $5,054.99 per month. Despite the requirements of the MSA, plaintiff alleged that defendant failed to notify plaintiff of his retirement or provide her any payments.

¶ 12 On June 11, 2008, plaintiff sent a letter and a Consent to Issuance of QILDRO form to defendant through her counsel. Defendant signed the consent on June 15, 2008, and returned it to plaintiff's counsel. Plaintiff filed her Petition for Entry of QILDRO in the Circuit Court of Cook County on September 23, 2008, attaching the judgment of dissolution, MSA, and consent as exhibits.

¶ 13 On October 6, 2008, defendant sought time to hire an attorney and was granted 28 days' time to file a response. On November 10, 2008, defendant filed his response and counter-petition alleging that plaintiff was in arrears for child support payments. Defendant argued that no QDRO was prepared or presented at the time of the dissolution judgment and, therefore, plaintiff's request should be denied. Defendant alleged that plaintiff had left the jurisdiction and failed to notify him of her income or provide tax returns as required by the judgment of dissolution. Therefore, he asserted that he could not inform her of his retirement and, further, he sought $5,950.83 for child support owed by plaintiff from the date of dissolution.

¶ 14 Following plaintiff's December 10, 2008, reply to defendant's response and counter-

petition, the trial court entered an order on December 30, 2008, requiring the parties to determine the value of the pension at the date of dissolution. Plaintiff engaged the services of Goldstein & Associates and defendant presented a copy of the WFA Report that was prepared during the pendency of the dissolution of petition on August 20, 1996. The record contains no transcript of the hearing or bystander report prepared by the parties to indicate whether the trial court considered the reports, but plaintiff argues that these reports were presented to the trial court at a hearing on plaintiff's petition and defendant's cross-petition on November 5, 2009. The court entered a handwritten order on that date and the parties and trial court agreed to have the order typed and presented for entry.

¶ 15 On January 5, 2010, the trial court accepted and entered the typed order on plaintiff's petition and defendant's counter-petition, ordering:

¶ 16 "1) The Court accepts the WFA Econometric Corp. pension evaluation which is to be updated, but requires the report to show valuation as of the date of the entry of the Judgment of Dissolution of Marriage, as it was prepared during the pendency of the divorce.

¶ 17 2) The Court finds that [plaintiff] is not entitled to any of the pension refund received by [defendant] after the entry of the decree.

¶ 18 3) The Court finds that [plaintiff] is in arrears for child support in the amount of $6,802.00 inclusive of today's date. Said amount will be offset against money owed plaintiff by defendant as agreed upon by parties.

¶ 19 4) [Plaintiff's] Petition for Attorney's Fees is reserved.

¶ 20 5) [Defendant] shall pay [plaintiff] the principal amount and interest on

pension payments received from July 1, 2005 to date.

¶ 21 6) This cause is continued to January 28, 2010 at 9:30 a.m. for status in 3007 for update of WFA Econometric Corp. valuation figures and determination of all amounts relative to the issues in this matter. That evidence relative to the preparation of the evaluation shall be presented to the Court."

¶ 22 On January 29, 2010, plaintiff filed a motion for reconsideration challenging the first two paragraphs of the January 5, 2010, order. Plaintiff argued that at the time of the judgment for dissolution, qualified domestic relations orders did not exist, but maintained that defendant consented to the issuance of a QDRO in both section 13.1 of the MSA and the subsequent consent form he signed on June 15, 2008. Plaintiff asserted that she argued at the hearing on her petition that two methods of dividing pensions exist: the present-value method and the reserved jurisdiction method. Plaintiff argued that the present value approach was not used because the pension was not immediately divided at the time of dissolution and the trial court reserved the issue of dividing the pension benefits. Therefore, plaintiff argued that the trial court erred in failing to follow the reserved jurisdiction method and order the issuance of a QDRO and her 60% marital share of the spousal contribution and interest earned.

¶ 23 Following the trial court's denial of defendant's motion to strike plaintiff's motion for reconsideration and subsequent briefing, the trial court denied plaintiff's motion on July 14, 2010. The trial court also reviewed the updated pension evaluation report prepared by WFA Econometrics Corp. and found that the marital portion of defendant's pension was $88,723.85, plaintiff's 60% share of that total was $53,234.31, and that after credit for plaintiff's child support arrearage of $6,802.00, plaintiff was to receive $46,432.31. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 Plaintiff presents two issues for review on appeal: (1) whether the court abused its discretion in calculating and ordering the division of defendant's pension benefits; and (2) whether the trial court erred in denying her motion for reconsideration. As noted in the introduction above, plaintiff's first issue presented is broken down in her brief into eight separate issues. We must first begin with an examination of the terms of section 13.1 of the MSA and then consider the trial court's choice of apportionment method.

¶ 26 Where an order of court is clear and unambiguous, it is not subject to construction or interpreted by the alleged intent or purpose of the court not expressed in the language of the order. *Governale v. Northwest Community Hospital*, 147 Ill. App. 3d 590, 593 (1986). However, where an order is ambiguous, the record of proceedings must be examined. *People v. Cooper*, 132 Ill. 2d 347, 353-54 (1989). Furthermore, we consider the language of an order alongside the language of the law upon which it is based. *Cooper*, 132 Ill. 2d at 354.

¶ 27 Likewise, general rules of contract interpretation apply to our interpretation of an MSA. *In re Estate of Zenkus*, 346 Ill. App. 3d 741, 743 (2004). The key to this analysis is determining the intent of the parties and where the language is clear and ambiguous, that is the best indication of the parties' intent. *In re Marriage of Sweders*, 296 Ill. App. 3d 919, 922 (1998). We conduct this review *de novo*. *Id.*

¶ 28 The trial court is vested with discretion to consider the evidence before it when determining a method of pension apportionment. *In re Marriage of Richardson*, 381 Ill. App. 3d 47, 53 (2008). Accordingly, we will not reverse the trial court's choice of apportionment method absent an abuse of that discretion. We will find that the trial court abused its discretion only if

no reasonable person would take the view adopted by the trial court. *In re Marriage of Schneider*, 214 Ill. 2d 152, 173 (2005).

¶ 29 A. Calculation of Pension Benefits

¶ 30 This case concerns the computation of the marital portion of defendant's pension. Section 503(b)(2) of the Marriage Act was added in 1998 to make the marital property issue absolutely clear with respect to the distribution of pension benefits. 750 ILCS 5/503(b)(2) (West 2004). The language of this section clarifies the intent of the legislature with respect to the distribution of marital property and limitations on attaching pension funds. Case law decided before this subsection was added affirms that section 503(b)(2) codified existing law. Thus, at all times relevant, Illinois law has held that only pension benefits earned during the time of the marriage may be considered marital property and distributed under a judgment of dissolution. *Stein v. Stein*, 166 Ill. App. 3d 852, 859 (1988); *In re the Marriage of Coram*, 86 Ill. App. 3d 845, 847 (1980). As noted above, the approach to follow in determining the value of pension benefits that are marital property is not codified, but a matter of discretion for the trial court to determine. We first consider the language of the MSA to determine the intent of the parties before considering the trial court's approach to compute plaintiff's benefit.

¶ 31 1. *Terms of the Marital Settlement Agreement*

¶ 32 Unfortunately, plaintiff does not provide a thorough analysis of section 13.1 of the MSA, citing to the language of that section simply to argue that a QDRO was contemplated by the parties and trial court. Defendant, on the other hand, analyzes this section to argue that the trial court did not abuse its discretion in rejecting plaintiff's proffered QDRO. We agree with

defendant that the key provisions of section 13.1 are the final two sentences of the first paragraph of that section, that read:

¶ 33 "Any benefits accruing, in whole or in part, either before the date of marriage or after the date of entry of the Judgment for Dissolution of Marriage shall be the sole and separate property of [defendant]. Any new benefit(s) which accrue(s) or occur(s) because of any increase in rank, station, position of authority and/or increase in rank, station, position of authority and/or increase in salary occurring after the entry of Judgment for Dissolution of Marriage shall be the sole property of [defendant]."

¶ 34 We further agree that the unambiguous plain language of this section supports the trial court's ultimate decision and counters plaintiff's eight arguments. Under this section, the marital portion of defendant's pension benefits was specifically limited by the parties. The parties agreed that the marital portion was strictly limited to the benefits accrued between the date of marriage and date of dissolution. Contrary to the formulas advanced by plaintiff, the parties granted defendant the benefits for any increase in benefits based on his advancement by position or salary after the date of dissolution. Therefore, pursuant to the MSA, plaintiff is entitled to 60% of that marital portion as defined on the date of dissolution.

¶ 35 Plaintiff also highlights the language of the next paragraph that the trial court was to retain jurisdiction for implementation of a "QDRO/QUILDRO, Order of Withholding, or any other method so developed to allow for the division of municipal pension benefits..." to argue that the trial court erred in rejecting defendant's consent and plaintiff's offered QDRO. Plaintiff

asserts that when defendant consented to the QILDRO, this provision required the trial court enter the QILDRO.

¶ 36 Whether or not defendant consented to the QILDRO, we agree that the terms of the MSA did not require the trial court to accept the QILDRO. The MSA provides that a QILDRO could be entered as one of several methods to allow for the division of pension benefits consistent with the terms of the MSA. Therefore, the terms of the MSA do not require the entrance of a QILDRO as argued by plaintiff. Case law does not require such action, but, rather requires the trial court to stay true to the rights and obligations of the parties that vested when the judgment for dissolution was finalized. *In re Marriage of Allen*, 343 Ill. App. 3d 410, 412-13 (2003).

¶ 37 In addition, the trial court's treatment of defendant's consent to the QILDRO is not of record, thereby waiving plaintiff's argument that the trial court erred in allowing defendant to withdraw his consent. *People v. Miller*, 311 Ill. App. 3d 772, 781 (2000). Waiver notwithstanding, the fact that defendant originally consented to a QILDRO does not allow the parties to avoid the rights and responsibilities clearly established by the judgment of dissolution and MSA. Furthermore, despite plaintiff's poorly constructed argument that the Pension Code and LABF clearly require the use of the reserved jurisdiction approach, the language of the Code clearly foresees the instant scenario where the court retains jurisdiction to amend a QILDRO calculation to conform to the judgment or MSA and that argument fails. See, e.g., 40 ILCS 5/1-119(n)(5) (West 2008). If plaintiff's argument were accepted, this would have created new and different rights and obligations for the parties than what was established in the judgment and would be an impermissible relitigation of that resolved issue. This leads to the ultimate question

addressed below, whether the trial court's final apportionment was true to the rights and obligations of the parties pursuant to the final judgment.

¶ 38 2. *Apportionment of the Pension Benefits*

¶ 39 With this understanding of the MSA, we turn our attention to the trial court's acceptance of the WFA Report and plaintiff's claim that it abused its discretion in making that finding. As noted by plaintiff, there are, in general, two approaches for the calculation and distribution of the marital portion of a spouse's pension benefits. The first is the "total offset" or "immediate offset" approach and the second is "reserved jurisdiction" approach.

¶ 40 Under the immediate offset approach, the court determines the present value of the pension benefit at the time of dissolution. The court then awards that value to the employee spouse and offsets that award with an award of marital property to the nonemployee spouse. This approach is utilized typically when "there is sufficient actuarial evidence to determine the present value of a pension, when the employee spouse is close to retirement age, and when there is sufficient marital property to allow an offset." *Richardson*, 381 Ill. App. 3d at 53-54.

¶ 41 When there is insufficient marital property to provide such an offset or where there are too many uncertainties to ascertain the present value, the reserved jurisdiction approach is used. Under this approach, the court awards a percentage of the marital interest in the formula and can either devise a formula at the time of dissolution to determine the interest or wait until benefits are to be paid. *Id.* at 54-55.

¶ 42 Plaintiff argues that the trial court abused its discretion by utilizing the immediate offset approach. She contends that the reserved jurisdiction approach favored by the courts in

scenarios such as the instant matter should have been followed. As above, she also argues that this equitable approach is favored by the Pension Code and LABF.

¶ 43 First, defendant correctly notes that the immediate offset approach was not used by the trial court. The only connection to that approach is the determination of the marital portion as of the date of dissolution. As noted by defendant, there was no substitute marital property awarded to plaintiff to offset the future pension earnings for defendant and plaintiff's argument that the trial court's use of the immediate offset approach was an abuse of discretion fails.

¶ 44 While recent case law, such as *Richardson*, expresses a preference for the use of the *Hunt* or reserved jurisdiction approach, that case did not involve language defining the award for the nonemployee spouse as in this case. *Richardson* presented the open question of how to value the marital portion where "the court did not decide the method of apportioning the marital interest in petitioner's pension benefits at the time of dissolution." *Richardson*, 381 Ill. App. 3d at 55. In this matter, there was not an open-ended question of calculating the marital interest. The parties agreed to the language limiting the calculation of the marital interest in defendant's pension, the trial court accepted that language, and upon plaintiff's instant petition, ordered updated calculation of the WFA Report consistent with the judgment and use of the reserved jurisdiction method was not required, or even proper, in this case.

¶ 45 Plaintiff does not provide supporting argument as how the WFA Report does not comport with the terms of the judgment and MSA or how her expert report provided the proper calculation. Plaintiff's claims that the trial court never looked at the WFA Report until after it had issued its ruling also ring false. The record indicates that it is true that the trial court did not see the final calculations until the later date, it obviously had reviewed the WFA Report when it

found that calculation was to be updated and utilized for the determination of the marital portion. Further support of record indicates the initial WFA Report was presented and considered during the course of the dissolution proceedings. There is nothing of record to indicate the use of the WFA Report constitutes an abuse of discretion.

¶ 46 Finally, as defendant addresses, the clear and unambiguous wording in the MSA to demonstrate that the trial court did not err in refusing to include a time-value calculation or benefits for spousal survivorship, early retirement, or purchased additional years of service in the calculations. Defendant correctly notes that some of these issues were waived by plaintiff's failure to raise them before the trial court, but waiver notwithstanding, the plain wording of the MSA supports rejection of these claims as well. The MSA specifically removes these benefits from the calculation of the marital portion and the trial court did not abuse its discretion in not including these in the calculation.

¶ 47 B. Motion for Reconsideration

¶ 48 Plaintiff also argues that the trial court erred in denying her motion for reconsideration. Plaintiff asserts that the trial court erred in rejecting her argument that the judgment for dissolution provided for the reserved jurisdiction approach and the trial court's failure to apply the *Hunt* formula was contrary to statutory and case law. As we have considered plaintiff's arguments in rejecting her claims above, we do not find the trial court erred in denying the motion for reconsideration.

¶ 49 III. CONCLUSION

¶ 50 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 51 Affirmed.