2019 IL App (4th) 180804-U

NO. 4-18-0804

FILED
July 25, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
TERRANCE E. KOCHIS,	)	Circuit Court of
Petitioner-Appellee,	)	Livingston County
and	)	No. 98D182
LISA A. BEZELY, f/k/a Lisa A. Kochis,	)	
Respondent-Appellant.	)	Honorable
	)	Robert M. Travers,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cavanagh and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The notice of appeal was timely filed after the trial court's final order entered in December 2018. The parties' 1998 marital settlement agreement was not ambiguous with respect to the respondent-wife's specific portion of the marital share of pension benefits. The trial court did not err in interpreting the parties' marital settlement agreement and vacating the 1999 QILDRO that conflicted with the plain terms of the parties' agreement. The court did not abuse its discretion in awarding interest on pension payments from the date of the petitioner-husband's retirement.

¶ 2 In October 1998, the trial court dissolved the marriage of petitioner, Terrance E. Kochis, and respondent, Lisa A. Kochis, now known as Lisa A. Bezely. The judgment of dissolution of marriage incorporated the parties' marital settlement agreement, which awarded a portion of Terrance's pension benefits; namely, it awarded Lisa $10,045.25 of the pension benefits that had accrued during the parties' marriage. In October 1999, a Qualified Illinois Domestic Relations Order (QILDRO) was entered that assigned pension benefits to Lisa in the

amount of $10,045.25 payable upon Terrance's termination or when a lump-sum retirement benefit was paid. When Terrance retired in May 2016, he elected monthly pension benefit payments. Thereafter, Lisa's counsel filed a motion to enforce the marital settlement agreement in November 2017. The court ultimately found in Lisa's favor, awarding her $10,045.25 of pension benefits as reflected in the marital settlement agreement, plus interest, in the amount of $2296.30. The court also ordered the 1999 QILDRO order vacated upon Terrance's payment of the above amounts. Lisa appealed the court's judgment entered in December 2018.

¶ 3 On appeal, Terrance argues that Lisa's notice of appeal was untimely, Lisa contends the trial court erred in interpreting the marital settlement agreement and, alternatively, Lisa argues she was owed statutory interest accruing from the date of the judgment of dissolution of marriage. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The parties were married in October 1989. During the marriage, Lisa worked as a hair dresser and Terrance was employed by Stark County High School beginning in 1983 until his retirement on May 27, 2016. The parties had no children together.

¶ 6 In September 1998, Terrance filed for dissolution of marriage. On October 27, 1998, the parties entered into a marital settlement agreement awarding Terrance the marital residence. Lisa, who was unrepresented by counsel at the time, was awarded various items of personal property under the agreement. The parties also agreed to the division of Terrance's pension benefits from the Teacher's Retirement System (TRS).

¶ 7 The parties' marital settlement agreement stated, in pertinent part, as follows:

"The [r]espondent shall receive $10,045.25 of the pension benefits with

Teacher's Retirement System[] (TRS) which have accrued to Petitioner, Terry Kochis, during the parties' marriage, and the Court shall enter a Qualified Illinois Domestic Relations Order in July of 1999, which shall be forwarded to the employer."

¶ 8 On October 27, 1998, the trial court entered a judgment of dissolution of marriage, which incorporated by reference the marital settlement agreement "for purposes of enforcement and modification." The court found that the terms and conditions of the marital settlement agreement were not unconscionable. It further stated that "this Court shall expressly retain jurisdiction of this cause for purposes of enforcing all the terms of this Judgment for Dissolution of Marriage."

¶ 9 On October 22, 1999, a Qualified Illinois Domestic Relations Order was entered. The QILDRO form reflects neither the option for monthly payments nor the option providing for a specific amount of pension benefits that "becomes payable" when "any partial member's refund is paid" was selected on the form. Instead, the QILDRO provided as follows:

"(3) The retirement system shall pay the indicated amounts of the following specified benefits to the alternate payee under the following terms and conditions:

* * *

(iii) *Of any member's refund payable upon termination or lump-sum retirement benefit that becomes payable, $10,045.25 when any refund or lump-sum retirement benefit is paid.*

(4) So long as this QILDRO is in effect, the member may not elect a form

of payment of the retirement benefit that has the effect of diminishing the amount of the payment to which the alternate payee is entitled, unless the alternate payee has consented to the election in writing and this consent has been filed with the retirement system.

(5) If the member began participating in the retirement system before July 1, 1999, this order shall not take effect unless accompanied by the written consent of the member as required under subsection (m) of Section 1-119 of the Illinois Pension Code, in the form adopted by the retirement system.

(6) The [C]ourt retains jurisdiction to modify this order." (Emphasis added.)

When Terrance retired in May 2016, he elected to take his pension benefits in monthly payments.

¶ 10 On October 11, 2017, Lisa, then represented by counsel, filed a petition to vacate the judgment for dissolution of marriage and the order approving the marital settlement agreement, arguing the marital settlement agreement was unconscionable. The record reflects she later withdrew this petition.

¶ 11 On November 17, 2017, Lisa filed a motion to enforce the marital settlement agreement, arguing the marital settlement agreement unambiguously awarded her a 50% fractional share of that portion of the pension benefits deemed marital regardless of Terrance's election to receive monthly benefit payments and, as a result, the trial court should modify the QILDRO to grant her monthly benefits of $551.73 "until [Terrance's] benefits terminate." Alternatively, she requested that the court require Terrance to pay the $10,045.25 amount plus

interest accrued from the date of the judgment of dissolution on October 27, 1998.

¶ 12 At a hearing on April 24, 2018, the parties presented arguments regarding Lisa's motion to enforce the marital settlement agreement. At the conclusion of the hearing, the court requested additional "information" regarding the intent of the parties and the marital settlement agreement. The parties submitted additional briefs on the matter.

¶ 13 On September 21, 2018, the court entered a written order finding that under the marital settlement agreement, Lisa was owed $10,045.25 of Terrance's pension benefits. The court found this to be the parties' intent under the terms of the marital settlement agreement. The court awarded interest beginning on May 27, 2016, the date Terrance retired.

¶ 14 In a docket entry dated October 26, 2018, the court entered judgment in the amount of $10,045.25 plus interest through December 11, 2018, in the amount of $2296.30. Terrance was ordered to pay this amount by December 11, 2018.

¶ 15 On December 5, 2018, the court entered a "supplemental judgment" ordering that Lisa was awarded "$12,230.09, which include[d] the principal balance of $10,045.25 as of May 27, 2016, and interest of $2,296.30 through December 10, 2018 as and for her interest in the Petitioner's Pension." The court also vacated the 1999 QILDRO. Lisa filed a notice of appeal on December 11, 2018.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, Lisa contends the trial court erred in its interpretation of the marital settlement agreement by awarding her $10,045.25 and not a fractional share of Terrance's pension benefits payable on a monthly basis or, in the alternative, that she was owed statutory

interest accruing from the date of the judgment of dissolution. Terrance argues that Lisa's notice of appeal was untimely.

¶ 19 A. Notice of Appeal

¶ 20 As stated, Terrance challenges this court's jurisdiction to consider the issues on appeal because Lisa's notice of appeal was untimely. Specifically, Terrance argues that the final order for purposes of appeal was the trial court's docket entry on October 26, 2018. Lisa contends the court's final order in this matter was the supplemental judgment entered on December 5, 2018. She maintains that she timely filed her notice of appeal within 30 days of that final order on December 11, 2018.

¶ 21 It is well settled that appellate courts have jurisdiction over final orders. *People v. Vari*, 2016 IL App (3d) 140278, ¶ 9, 48 N.E.3d 265. "A final judgment is a determination by the court on the issues presented by the pleadings which ascertains and fixes absolutely and finally the rights of the parties in the lawsuit. A judgment is final if it determines the litigation on the merits so that, if affirmed, nothing remains for the trial court to do but to proceed with its execution." *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 232-33, 840 N.E.2d 1174, 1181-82 (2005).

¶ 22 "The notice of appeal serves the purpose of informing the prevailing party in the trial court that the unsuccessful litigant seeks a review by a higher court." *Burtell v. First Charter Service Corp.*, 76 Ill. 2d 427, 433, 394 N.E.2d 380, 382 (1979). "[I]t is generally accepted that a notice of appeal is to be liberally construed." *Id.* "[T]he failure to specify a particular order in a notice of appeal does not preclude our review of that order 'so long as the order that is specified directly relates back to the judgment or order from which review is sought.' " *In re Desiree O.*,

381 Ill. App. 3d 854, 863, 887 N.E.2d 59, 68 (2008) (quoting *Perry v. Minor*, 319 Ill. App. 3d 703, 709, 745 N.E.2d 113, 118 (2001)). An unspecified judgment is reviewable if it is a "step in the procedural progression leading" to the judgment specified in the notice of appeal. *Burtell*, 76 Ill. 2d at 435.

¶ 23 The October 26, 2018, docket entry provides as follows:

> "ATTY GALLOWAY WITH PET - ATTY GALASSI WITH RESP - CAUSE COMES ON FOR FOLLOW UP ON COURT'S ORDER OF 9/21/18 - NOTHING FURTHER OFFERED OTHER THAN ARGUMENT - PROVISIONS OF ORDER REMAIN IN EFFECT - JUDGMENT ENTERED AGAINST PETITIONER AND IN FAVOR OF RESPONDENT FOR $10,045.25 PLUS $2,296.30 INTEREST THROUGH 12/11/18 - PET TO PAY BY THAT DATE"

¶ 24 The trial court subsequently entered a "supplemental judgment" on December 5, 2018, stating as follows:

> "This matter coming before the Court on October 26, 2018, the Petitioner with his attorney, Aaron S. Galloway; the Respondent with her attorney, Julie L. Galassi; the Court having made its findings on the record on October 26, 2018; It is hereby ordered that:
>
> 1. Judgment is entered in favor of the Respondent, Lisa A. Bezely, and against the Petitioner, Terrance E. Kochis, in the amount of $12,230.09, which includes the principal balance of $10,045.25 as of May 27, 2016, and interest of $2,296.30 through December 10, 2018 as and for her interest in the Petitioner's

Pension.

2. The previously issued QILDRO is to be vacated upon payment of the sums above as such sum is in satisfaction of the Respondent's interest in the TRS retirement plan of the Petitioner.

3. This is a final and appealable judgment and there is no reason to delay enforcement or appeal or both from the same."

No further proceedings occurred between the docket entry in October 2018 and the supplemental judgment entered in December 2018.

¶ 25 Here, as stated, Lisa challenged the trial court's interpretation of the parties' marital settlement agreement and whether the court correctly allocated Terrance's pension benefits. In her notice of appeal, Lisa states that she "appeals the trial court's Order of December 5, 2018." We note that the court's December 5, 2018, order vacated the QILDRO, something the October 2018 docket entry did not do. Thus, while the October 2018 docket entry addressed the issue regarding the amount of pension benefits owed to Lisa under the marital settlement agreement, it left unresolved the issue of the 1999 QILDRO and its enforceability.

¶ 26 We find that, contrary to Terrance's argument, the October 2018 docket entry was not a final order because it left unresolved issues that were attendant to Lisa's claim for relief with respect to the interpretation of the marital settlement agreement and whether the 1999 QILDRO should be vacated or enforced. The October 2018 docket entry was thus a step in the procedural progression leading to the December 2018 supplemental judgment specified in Lisa's notice of appeal. Accordingly, we view Lisa's notice of appeal to have been timely filed. In light of our finding, we deny as moot Lisa's motion to supplement the record on appeal.

¶ 27 B. Pension Benefits

¶ 28 Reaching the merits of the appeal, we consider Lisa's argument that the trial court incorrectly interpreted the language of the parties' marital settlement agreement in awarding her marital portion of Terrance's pension benefits. Specifically, she argues the court's judgment "resulted in [Lisa] getting *no* TRS pension benefits[.]" (Emphasis added.) She also argues that the marital settlement agreement, which was incorporated by reference into the judgment of dissolution of marriage, is ambiguous with respect to distribution. She claims that her share of the pension benefits should be calculated under the reserved jurisdiction method of apportionment, also known as the *Hunt* formula. See *In re Marriage of Hunt*, 78 Ill. App. 3d 653, 397 N.E.2d 511 (1979). According to Lisa, she is entitled to monthly pension benefit payments in the amount of $551.73 representing a 50% fractional share of the marital portion of Terrance's TRS benefits, which she calculates to be $1103.46. She claims the trial court erred in ordering a lump-sum payment in the amount of $10,045.25.

¶ 29 "A marital settlement agreement is a contract." *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 26, 980 N.E.2d 261. "A court construes the settlement provisions within a dissolution judgment so as to give effect to the intention of the parties, and where the terms are unambiguous, the parties' intent is determined solely from the language of the instrument." *In re Marriage of Mulry*, 314 Ill. App. 3d 756, 759, 732 N.E.2d 667, 671 (2000). "[T]he terms of the marital settlement agreement are binding on the parties and the court." *Blum v. Koster*, 235 Ill. 2d 21, 32, 919 N.E.2d 333, 340 (2009). Our review of the interpretation of a marital settlement agreement is *de novo*. *In re Marriage of Wassom*, 352 Ill. App. 3d 327, 330, 815 N.E.2d 1251, 1255 (2004).

¶ 30 Generally, there are two approaches to valuing and apportioning a pension: (1) the "cash out" approach and (2) the "reserved jurisdiction" approach. (Internal quotation marks omitted.) *In re Marriage of Wisniewski*, 286 Ill. App. 3d 236, 240-41, 675 N.E.2d 1362, 1366 (1997). Under the cash out approach, the court determines the present value of the pension with a discount to reflect the possibility that it may not vest. *Id*. at 240. The court immediately awards the nonemployee-spouse "other marital property" to compensate for awarding the entire pension to the employee-spouse. *Id*.

¶ 31 By contrast, the reserved jurisdiction approach is used when it is too difficult to place a present value on a pension because of uncertainties with respect to vesting or where a lack of marital property makes an offset to the nonemployee-spouse impractical. *In re Marriage of Hunt*, 78 Ill. App. 3d 653, 663, 397 N.E.2d 511, 519 (1979). Under this approach, the court does not immediately compensate the nonemployee-spouse and instead "orders that the employee[-]spouse pay the nonemployee[-]spouse his or her portion of the marital share 'if, as, and when' the pension plan becomes mature." *Wisniewski*, 286 Ill. App. 3d at 241 (quoting *Hunt*, 78 Ill. App. 3d at 663). The court may either devise a formula that will later be used to apportion the pension payments or the court may wait until pension benefits are to be paid before determining the nonemployee-spouse's share. *Id*. The reserved jurisdiction approach is "particularly appropriate if the interest has not vested, because it 'divides *** the risk that the pension will fail to vest.' " *Hunt*, 78 Ill. App. 3d at 664 (quoting *In re Marriage of Brown*, 15 Cal. 3d 838, 848, 544 P.2d 561, 567 (1976)).

¶ 32 Although Lisa claims the trial court's December 2018 supplemental judgment "resulted in [Lisa] getting *no* TRS pension benefits," we find the December 2018 supplemental

judgment and the September 21, 2018, order clearly reflect the court awarded Lisa $10,045.25 of the pension benefits plus interest. (Emphasis added.) Further, we find the court's award of pension benefits is consistent with the plain terms of the parties' 1998 marital settlement agreement.

¶ 33 As mentioned earlier, the marital settlement agreement stated, in pertinent part, as follows:

> "The [r]espondent shall receive $10,045.25 of the pension benefits with Teacher's Retirement System[] (TRS) which have accrued to Petitioner, Terry Kochis, during the parties' marriage, and the Court shall enter a Qualified Illinois Domestic Relations Order in July of 1999, which shall be forwarded to the employer."

¶ 34 According to the clear and unambiguous language of the marital settlement agreement, Lisa was to receive the specific amount of $10,045.25 as her marital share of Terrance's TRS pension benefits. Contrary to Lisa's argument on appeal, there is no need to employ the *Hunt* formula to calculate her share of the pension benefits.

¶ 35 As the trial court observed, what the marital settlement agreement did not address was *when* the pension benefit payments would be made to Lisa. In 1999, a QILDRO was entered that attempted to resolve this issue. See 40 ILCS 5/1-119 (a)(6) (West 2018) (A "QILDRO" is "an Illinois court order that creates or recognizes the existence of an alternate payee's right to receive all or a portion of a member's accrued benefits in a retirement system ***."). However, the QILDRO also gave Terrance the option of taking pension payments in monthly installments, which he in fact chose when he retired in May 2016. The monthly payment option conflicted

with another provision of the 1999 QILDRO that stated, in pertinent part, as follows:

> "(3) The retirement system shall pay the indicated amounts of the following specified benefits to the alternate payee under the following terms and conditions:
>
> * * *
>
> (iii) Of any member's refund *payable upon termination or lump-sum retirement benefit* that becomes payable, $10,045.25 when any refund or lump-sum retirement benefit is paid." (Emphasis added.)

¶ 36 The marital settlement agreement unambiguously provided that Lisa was to receive the specific amount of $10,045.25 without limitation or conditions on her receipt of her pension benefits. However, if payment of her share was to be made through the QILDRO, Terrance would have been required to elect a lump-sum payment and not monthly benefits. Recognizing the problem created by Terrance's election of monthly pension benefit payments, the trial court reasonably vacated the QILDRO and ordered Terrance to pay Lisa the amount of $10,045.25. We find no error occurred.

¶ 37 C. Interest Payments

¶ 38 Finally, Lisa argues the trial court erred in awarding interest beginning on May 27, 2016, the date of Terrance's retirement, and not from October 27, 1998, the date of the judgment of dissolution. She contends the award of interest was mandatory and not within the discretion of the trial court pursuant to section 2–1303 of the Code of Civil Procedure (Code) (735 ILCS 5/2–1303 (West 2018)).

¶ 39 Section 2–1303 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1303 (West

2018)) provides that "[j]udgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied ***." 735 ILCS 5/2-1303 (West 2018). It further provides that, "When judgment is entered upon any award, *** interest shall be computed *** from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment. Interest shall be computed and charged only on the unsatisfied portion of the judgment as it exists from time to time." *Id.*

¶ 40 With respect to the mandatory or discretionary nature of the imposition of interest, our supreme court explained in *Finley v. Finley*, 81 Ill. 2d 317, 332, 410 N.E.2d 12, 19 (1980), that "a divorce proceeding partakes so much of the nature of a chancery proceeding that it must be governed *** by rules that are applicable thereto" and in chancery proceedings, "the allowance of interest lies within the sound discretion of the trial judge *** where warranted by equitable considerations ***." The court in *Finley* held that "the allowance of interest on past-due periodic [child-]support payments" was not mandatory and within the discretion of the trial court. *Id.* Seven years later, the legislature amended portions of the Code of Civil Procedure and the Dissolution of Marriage Act, mandating the imposition of interest on past due child-support payments. See *Illinois Department of Healthcare & Family Services ex rel. Wiszowaty v. Wiszowaty*, 239 Ill. 2d 483, 490, 942 N.E.2d 1253, 1257 (2011) ("[I]nterest payments on child[-]support payments became mandatory effective May 1, 1987.").

¶ 41 Subsequently, our supreme court found in *Wiszowaty*, 239 Ill. 2d at 487-488, that past-due child support accrued mandatory interest under the 1987 statutory amendments. The court did not address other types of judgment. The court stated that prior to the legislature's amendments, "unpaid child support payments were not characterized as judgments." *Id.* at 488.

"The General Assembly changed the law in 1987" and, under those amendments, "each unpaid child support installment is an actual 'judgment' that arises by operation of law, and that each such judgment 'shall bear interest.' " *Id*. at 490.

¶ 42 The court further explained that its prior decision in *Finley* did "not compel a different result." *Id*. at 490. "*Finley* thus stands for the proposition that, *where there are no controlling statutes* defining unpaid support payments as judgments or providing for interest, interest may be awarded on those payments as a discretionary matter because the divorce proceeding may be likened to a chancery proceeding." (Emphasis in original). *Id*. at 489. The court went on to explain that "*Finley* does not stand for the proposition that interest is left to the discretion of the circuit court even when governing statutes have plainly stated otherwise." *Id*. at 489. Following the decision in *Finley*, Illinois courts have continued to find "the decision to award interest on any dissolution judgment, other than a judgment for child support, is a discretionary matter for the trial court." *In re Marriage of Carrier*, 332 Ill. App. 3d 654, 660, 773 N.E.2d 657, 663 (2002); see also *In re Marriage of Polsky*, 387 Ill. App. 3d 126, 141, 899 N.E.2d 454, 467 (2008) ("Interest on dissolution judgments is within the discretion of the trial court."); *In re Marriage of Ahlness*, 229 Ill. App. 3d 761, 763–64, 593 N.E.2d 1064, 1066-67 (1992) (finding *Finley* should be given a "broad application" and upholding the imposition of interest by the trial court in connection with a property-settlement award).

¶ 43 Accordingly, contrary to Lisa's argument on appeal in the instant case, we find that the supreme court's ruling in *Wiszowaty* did not make the imposition of interest mandatory on *all* judgments; rather, it pertained only to judgments for child support payments. Here, the trial court exercised its discretion and ordered interest on Lisa's portion of Terrance's pension

benefit to begin on the date of Terrance's retirement in May 2016. The court's decision in this regard was reasonable and not an abuse of its discretion.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment.

¶ 46 Affirmed.