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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the Circuit Court
PAMELA A. JESSEE,)	of Du Page County.
)	
Petitioner-Appellee,)	
)	
and)	No. 13-D-1626
)	
JOSEPH D. JESSEE,)	Honorable
)	Neal W. Cerne,
Respondent-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BIRKETT delivered the judgment of the court.
Justices Schostok and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in apportioning petitioner's teacher's pension; being raised for the first time on appeal, respondent's contentions regarding the parties' Willowbrook and Beecher property were forfeited and respondent's contention about the Lemont property was forfeited for failing to cite to authority as well as for being raised for the first time in the trial court in respondent's motion to reconsider.

¶ 2 Respondent, Joseph D. Jessee, appeals the judgment of the circuit court of Du Page County dissolving his marriage to petitioner, Pamela A. Jessee. On appeal, respondent argues that the trial court abused its discretion by treating petitioner's teacher's retirement system pension as income rather than an asset to be equitably apportioned and by failing to specify the

parties' responsibility for paying expenses to maintain certain real property until it is able to be sold. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On December 31, 1986, the parties married. During the course of the marriage, the parties had three children. The three children were emancipated at the time of the dissolution proceedings. In December 2011, respondent moved out of the marital residence and the parties recognized that their marriage was irretrievably broken. On August 5, 2013, petitioner filed her petition for dissolution of marriage. On May 17 and 18, 2018, the trial court conducted the hearing on the petition for dissolution.

¶ 5 As of the hearing, petitioner was a week shy of her 65th birthday, and respondent was 69 years old. Petitioner had taught at a public school for 22 years (6 of which occurred before her marriage to respondent). At the time of the hearing, petitioner was employed as Dean of the College of Education at Lewis University where she earned an annual salary of approximately \$135,000. Petitioner had worked at Lewis University for 13 years, but she was planning to retire from effective June 30, 2018. For the years preceding the hearing, petitioner's income varied: \$218,286 in 2012; \$163,377 in 2013; \$163,952 in 2014; \$191,476 in 2015; \$191,895 in 2016; and \$187,125 in 2017.

¶ 6 In 2012, when petitioner retired from her teacher's position, she began to receive her pension from the Teachers' Retirement System (TRS). Petitioner testified that she received \$55,000 per year for her pension (\$4,583 per month). Petitioner testified that she will also receive a pension from Lewis University upon her retirement. She estimated that the Lewis University pension would provide about \$32,000 annually (\$2,671 per month).

¶ 7 Respondent, a certified public accountant, was self employed and owned an accounting practice employing two accountants in addition to himself. Respondent's income varied in the years preceding the hearing: \$84,836 in 2012; \$81,300 in 2013; \$111,318 in 2014; \$139,308 in 2015; \$121,507 in 2016. As of the date of the hearing, respondent had not filed his 2017 tax return. Respondent also recently inherited nonmarital assets from his mother's estate upon her death with an estimated value of \$190,000

¶ 8 Respondent testified that he had experienced several strokes resulting in weakness and loss of dexterity on one side of his body. He testified that he had difficulty in walking, was prone to falling, and often used a wheelchair. Respondent also testified that his vision was deteriorating. His physical condition had led to a reduced role in his accounting practice.

¶ 9 The parties possessed two parcels of residential real estate, the marital residence in Orland Park and another dwelling in Willowbrook. The equity in those two parcels was a little less than \$100,000. The parties also possessed a vacant parcel located in Beecher, the value of which was \$12,000 with no encumbrances.

¶ 10 The parties possessed a vacant parcel located in Lemont. Cook County had filed suit against the parcel owners alleging improper dumping and tree removal. Respondent filed suit against the parcel's tenants seeking damages related to the violations. The parcel was given an equity value of \$75,000. However, in light of the ongoing litigation, the parties acknowledged that there was a distinct possibility that the equity could be swallowed up by the fines sought by Cook County and that the Lemont property could result in significant liability to the marital estate. Petitioner argued that she was uninvolved in the purchase of the Lemont property and suggested it be solely the responsibility of respondent. The evidence demonstrated, however, that the Lemont property was purchased during the marriage and neither respondent's actions nor

inactions were the basis of the violations currently causing the litigation surrounding the Lemont property.

¶ 11 Following the presentation of the evidence, the parties provided written argument to the trial court. On June 26, 2018, the trial court entered judgment dissolving the parties' marriage and setting forth its reasoning regarding the issue of maintenance and the property distribution, as well as the distributions of the marital estate. Ultimately, the trial court ordered that each party be barred from receiving maintenance from the other. In reaching the decision, the trial court noted that it was only because petitioner was retiring shortly following the hearings that she was eligible to receive maintenance; otherwise, had petitioner kept working, her gross income would have been larger than respondent's, so he would have been the party to receive maintenance.

¶ 12 Regarding the distribution of the marital estate, the trial court ordered as follows:

“B. [Respondent] is awarded the Orland Park residence.

C. The residence in Willowbrook and the vacant lot in Beecher are to be listed for sale and the proceeds equally divided. From [respondent's] share, the sum of \$9,000 will be paid to [petitioner] for her interest in the Orland Park residence.

D. The vacant lot in Lemont, IL is to be sold and the proceeds equally divided between the parties once the litigation has been concluded allowing for the sale.

a. Each party will be a party to the listing agreement.

b. The written consent of each party, or Court Order, will be needed for the specific date when the property will be listed, the choice of a realtor, the asking price, and the acceptance of an offer.

c. Any expenses incurred by the parties, from this date forward, in maintaining the property or in relation to the lawsuits will be reimbursed 50% to the party who paid the expense from the sale proceeds received by the non-paying party. The sale proceeds is *[sic]* the only source from which expenses will be reimbursed.

d. [Petitioner] is to be allowed full access to the litigation so as to be fully informed as to its status.

E. [Petitioner's] pension from her employment at Lewis University is equally divided between the parties. If needed, a Qualified Domestic Relations Order (QDRO) will be entered by the Court.

F. [Petitioner's] 403(b) and traditional IRA are equally divided between the parties.

G. The life insurance policy is awarded to [petitioner].

H. Each party is awarded their automobiles and will indemnify and hold the other harmless relative to any liability associated with the vehicle.

I. Each party is awarded their checking/savings accounts, or other financial account in their sole name as their sole property.

J. Each party is awarded the personal property that is within their possession and their personal financial accounts as their sole and separate property free of any claim by the other.

K. Each party is awarded the debt in their name and will indemnify and hold the other harmless on those debts. This excludes the debts secured by the residence as discussed above.”

¶ 13 The trial court also declined to order contribution for attorney fees. The court held that, based upon the distribution of the marital estate, neither party had a greater ability than the other to contribute attorney fees.

¶ 14 On July 26, 2018, respondent filed a motion to reconsider. Respondent challenged the trial court's rulings regarding the property in Lemont and its handling of petitioner's TRS pension. On September 12, 2018, the trial court denied the motion to reconsider:

“My view is that with regards to the property, I'm going to deny the Motion to Reconsider relative to the Lemont property. The testimony as to the availability or the likelihood of success on any litigation was none. There was no analysis of the—or what his [*sic*] potential could be. In essence, the evidence was is that it's up in the air and we'll see what happens. I think by forcing the parties to possibly throw good money after bad money is an issue that each party has to face. To force them to contribute to the expense I think could be unfair because then they would be bound and we have no idea how far this litigation is going to go or for how long or what that expense could be. The idea that each party can contribute to it and they'll be reimbursed from the proceeds is so that, you know, if the parties believe that there's going to be proceeds, they can contribute with the hope of getting reimbursed. But if there's not going to be enough money to reimburse you then, yes, then they're out-of-pocket which could be the case. It could be the case where there's absolutely no proceeds and we don't get any of our expenses paid. That could absolutely happen. But, in my mind, the way the judgment was written it gives each party the option to make that determination on their own and not force them to get into that position.

With regards to the argument, also, that we could do it in a different fashion, okay, I suppose that there's always different ways to handle how you handle these pieces of property. Frankly, no one suggested that as an option at the time of the closing arguments or, really, how to handle this property at all which its whole future is unknown. And I think to bring it up now on a Motion to Reconsider, hey, we should reargue this and we should re-do it in this fashion instead, I don't think is the purpose of a Motion to Reconsider. In my mind, as I indicated, this is sort of like rearguing it now and saying, well, let's do it in this way instead, when we had the opportunity at that time and [petitioner] could have responded at that time with her counter-argument as to how it should be done. So I think it kind of puts her in an unfair position now to say, hey, let's redo it this way.

With regards—that's the reason why I [am] denying the Motion to Reconsider with regards to [the] Lemont property.

With regards to the pension—I'm sorry. There were two pensions at the time, as I indicated. One was in pay status and had been in pay status. I mean, there was a second pension that was going to become payable within literally days of the judgment. I treated the one that was coming into existence or going to be in pay status within days of the judgment, I treated that, admittedly, as property and divided that between the parties.

With regard to the pension that [petitioner] had acquired during the course of the marriage, it was the teacher retirement system and that had been paying for some years during the course of the marriage to both parties. In my mind, those—that can be treated as an asset or as income. I understand the case law that [respondent's counsel] has cited does allow for that but I think it will—it says that it should be treated as property and

divided accordingly. I believe that with the recent cases in which the Court's trying to make a distinction between what is property and what is income, I believe that if the parties have been receiving it and have been treating it as income throughout the marriage that I should, therefore, also treat it as income and divide it and use it as income between the parties. That's how the parties had treated that source of income.

So I'm going to deny the Motion to Reconsider with regards to the pension."

¶ 15 Respondent timely appeals.

¶ 16 II. ANALYSIS

¶ 17 On appeal, respondent argues that the trial court abused its discretion regarding the TRS pension. Specifically, respondent contends that the trial court's determination that the TRS pension was marital property is at odds with its decision to treat it as solely petitioner's income and improperly deprived respondent of any interest in the property. Respondent also contends that the trial court erred in failing to specify the parties' responsibilities regarding the payment for expenses on their real property and limiting any reimbursement for those expenses to the proceeds accruing from the sale of the Lemont property. We consider each contention in turn.

¶ 18 A. Treatment of the TRS Pension

¶ 19 Respondent first argues that, after the trial court determined the TRS pension was marital property, it was required to divide it in just proportions between the parties. However, the trial court "failed to divide the TRS pension or allocate it in any manner." Respondent concludes that the TRS pension must be divided and offers a division of 60% to respondent and 40% petitioner. Respondent's argument misses the mark.

¶ 20 As an initial matter, we note that respondent does not suggest the standard of review to apply to his arguments. Rule 341(h)(3) (eff. May 25, 2018) requires a party to "include a concise

statement of the applicable standard of review for each issue, with citation to authority.” Respondent has not done so. We observe that our supreme court’s rules are not simply suggestions to be followed or not at a party’s whim, but are mandatory rules of procedure. *In re Marriage of Foster*, 2014 IL App (1st) 123078, ¶ 115. Failure to follow the rules can result in the forfeiture of the offending arguments. *Kic v. Bianucci*, 2011 IL App (1st) 100622, ¶ 23. Such a drastic resolution is not warranted in this case, although we strongly admonish counsel to carefully follow all applicable rules in the future.

¶ 21 The trial court’s judgment dividing the property is reviewed for an abuse of discretion. *In re Marriage of Vancura*, 356 Ill. App. 3d 200, 205 (2005). The factual findings made along the way to the final division are not disturbed unless they are against the manifest weight of the evidence. *Id.* Likewise, the allocation of an asset into the marital estate or a party’s nonmarital estate is generally reviewed under the manifest-weight-of-the-evidence standard. *In re Marriage of Zamudio & Ochoa*, 2019 IL App (3d) 160537, ¶ 14. Finally, we note that we review the trial court’s judgment, not its reasoning, and we may affirm the judgment on any basis supported by the record. *In re Marriage of Romano*, 2012 IL App (2d) 091339, ¶ 48.

¶ 22 As an initial matter, we note that the assignment of the entirety of petitioner’s TRS pension to the marital estate was against the manifest weight of the evidence. The testimony and record clearly reveal that petitioner was a teacher in a public school for 22 years with 16 of the years of service occurring during the marriage. This testimony was unrebutted and uncontroverted. The trial court’s assignment of 100% of the TRS pension to the marital estate was therefore against the manifest weight of the evidence. The correct proportion of the marital portion of the pension is 72.73% with 27.27% being in petitioner’s nonmarital estate. This error, however, is immaterial.

¶ 23 Respondent argues that, once the TRS pension was found to be marital, the trial court was required to divide it in just proportions. 735 ILCS 5/503(d) (West 2018) (enumerating the factors to be considered in the division of marital property). The division of marital property into just proportions does not require mathematical equality; rather, the division must be equitable in light of the factors. *In re Marriage of Evanoff & Tomasek*, 2016 IL App (1st) 150017, ¶ 30. What respondent overlooks is that the trial court implicitly awarded petitioner 100% of the marital portion of the TRS pension as her property. Based on her announced intention to retire at the end of June 2018, petitioner's monthly income (including the whole of the TRS pension) would be around \$6,000. Respondent, by contrast, who also did not announce any intention of retiring, would continue to earn a monthly income around \$8,000 to \$10,000 based on his average income from previous years plus the proceeds of splitting the university pension. The trial court recognized that the marital estate was relatively small and insured that the parties' monthly income remained relatively even. We cannot say that this is an inequitable result.

¶ 24 We also note that respondent does not expressly challenge the trial court's decision that neither party should receive maintenance. Respondent does grumble that petitioner's retirement flipped the maintenance scenario from one where he would be the eligible party to receive maintenance to one where, because petitioner's income has diminished to less than respondent's, she is the eligible party. Respondent does argue that petitioner's retirement is speculative and should not be considered in the property division. We disagree.

¶ 25 First, the trial court was in the best position to observe the witnesses and to assess their credibility and accord appropriate weight to their testimony. We do not believe that the trial court's determination to credit petitioner's announcement of retirement to be effective June 30,

2018, was against the manifest weight of the evidence. Second, and more importantly, we note that, on July 26, 2018, respondent filed his motion to reconsider, nearly four weeks after petitioner's stated date of retirement. Respondent did not assert that respondent had not retired. Indeed, there was no whisper in the months following petitioner's retirement to the denial of respondent's motion to reconsider that petitioner had not followed through with her stated intention of retiring as of June 30, 2018. Respondent had ample opportunity to raise this as newly discovered evidence had petitioner not followed through. We find the absence of a factual challenge telling and confirming that petitioner retired as of June 30 and her income dropped accordingly to the level determined by the trial court in its order of dissolution.

¶ 26 Respondent cites to a number of cases for the proposition that the marital portion of a pension in pay status is a property interest subject to division. *E.g.*, *In re Marriage Manker*, 375 Ill. App. 3d 465 (2007); *In re Marriage of Brackett*, 309 Ill. App. 3d 329 (1999); *In re Marriage of Dooley*, 137 Ill. App. 3d 401 (1985). The trial court implicitly awarded 100% of the marital portion of the TRS pension to petitioner; thus, the proposition cited by respondent was actually followed in this case.

¶ 27 The implicit distribution notwithstanding, the trial court's stated rationale explained following the hearing on the motion to reconsider indicates that it was honoring the parties' consistent treatment of the TRS pension, which had been in pay status and which had been paying out beginning in 2012, as income. Nothing in the cited cases prohibits treating a pension in pay status as simple income, especially where the parties have treated the asset as income for a period of many years. Likewise, our own research has not uncovered a case requiring a pay-status pension to be divided as property in a property allocation rather than treated as income, if

appropriate. Here, we believe that the trial court's treatment of the TRS pension as income was appropriate as well as an implicit division of property. Thus, respondent's cases are inapposite.

¶ 28 Respondent also suggests that, while an award of property in lieu of maintenance is proper, an award of maintenance in lieu of property is improper. *Marriage of Brackett*, 309 Ill. App. 3d at 338. The applicability of this proposition in this case is uncertain. First, the trial court expressly denied maintenance to either party. Therefore, neither party can be deemed to be receiving maintenance. Second, even though, by dint of her retirement, petitioner is eligible to receive maintenance, she received the implicit 100% distribution of the marital portion of the TRS pension, which would seem to satisfy the principle of property in lieu of maintenance.

¶ 29 Respondent suggests that it is he should receive maintenance from petitioner due to his age and declining health. The evidenced presented at the hearing demonstrated that respondent had issues with mobility, pain, eyesight, and some weakness. Yet respondent also demonstrated a continued capacity to work, and his income remained reasonably steady despite his infirmities. Respondent testified that he was servicing fewer clients in his business, but there was no clear testimony about trend over time; moreover, the income evidence showed stability despite the declining number of clients. The trial court also determined that respondent had a greater earning capacity than petitioner due to her retirement, but noted that both parties will face difficulties in acquiring future assets—petitioner due to no longer working, and respondent due to a limited number of years left in his working life.

¶ 30 The trial court's judgment on maintenance is generally reviewed for an abuse of discretion. *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009). Based on the evidence in the record, we cannot say that the trial court abused its discretion in refusing to award either party maintenance.

Accordingly, we do not agree with respondent's assertion that he should be receiving maintenance, and we base our judgment on the record before us.

¶ 31 For the foregoing reasons, we hold that the trial court did not abuse its discretion in the treatment of petitioner's TRS pension, either as solely income or as an implicit 100% award of the marital portion of the pension to petitioner. We now turn to the issue of ongoing upkeep expenses.

¶ 32 **B. Ongoing Property Expenses**

¶ 33 Respondent contends that the trial court erred by failing to apportion the responsibility to pay upkeep, taxes, debt service, and the like for the parties' marital real property. Respondent objects to, in his view, the implicit requirement that he alone shoulder the burden of these expenses until the litigation surrounding the Lemont property is resolved that that property is sold. Respondent also adds to the mix the upkeep expenses of the Willowbrook and Beecher properties, claiming that they are not accounted for.

¶ 34 We note that respondent's motion to reconsider requested allocation of the upkeep expenses only in relation to the Lemont property. Respondent raised no issue with the trial court's judgment regarding the Willowbrook residence or the Beecher property. An issue raised for the first time on appeal is forfeited. *Accettura v. Vactionland, Inc.*, 2018 IL App (2d) 170972, ¶ 36. Thus, because this issue with respect to the Willowbrook and Beecher properties is raised for the first time on appeal, it is forfeited.

¶ 35 Indeed, the forfeiture doctrine extends to issues raised in the trial court for the first time in a motion to reconsider. *Caywood v. Gossett*, 382 Ill. App. 3d 124, 134 (2008). The maintenance and upkeep issue regarding the Lemont property was also raised for the first time before the trial court in respondent's motion to reconsider. We believe, however, that this

occasion presented the first opportunity for either party to raise the issue of the trial court's apparent omission of financial responsibility for upkeep and maintenance expenses. However, as we noted, respondent did not include the Willowbrook or Beecher properties at that time and, for the very first time in this case, sought to hitch their wagon to the Lemont issue. Thus, the upkeep and maintenance issues for the Willowbrook and Beecher property are appropriately forfeited for this reason too.

¶ 36 Turning to the Lemont property, we note that respondent does not include citation to legal authority in support of his argument, beyond an accusation that, in failing to apportion the upkeep and maintenance expenses for the Lemont property, the trial court “abandoned its duty to preserve the marital estate” pursuant to section 102(10) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/102(10) (West 2018)). Section 102(10) provides that one of the underlying purposes of the Act, for which it is to be liberally construed, is to “make provision for the preservation and conservation of marital assets during the litigation.” *Id.* We believe that one of the general purposes of the Act is insufficient support for respondent's argument, particularly when he fails to explain or gainsay the trial court's own explanation for crafting its judgment regarding the Lemont property. Accordingly, the argument is forfeited. Ill. S. Ct. R. 341(h)(7) (eff. May 25, 2018).

¶ 37 The trial court expressly ordered that reimbursement for the expenses incurred relating to the Lemont property would be paid from the sale proceeds of the property and that each party would be reimbursed by the other party 50% for the expenses he or she paid for upkeep and maintenance for the Lemont property. Thus, the trial court in fact, contrary to respondent's contention, allocated the upkeep and maintenance expenses associated with the Lemont property.

¶ 38 The trial court also explained its thinking during the ruling on respondent’s motion to reconsider, noting that each party would have to make the decision whether to pay the expenses necessary to maintain the suit and the property. If either or both parties decided not to do so, that was a financial decision for each party to make, not one the trial court was willing to impose. The trial court provided an express mechanism for either or both parties to recoup their expenses incurred on the maintenance and upkeep for the Lemont property and provided a thorough explanation for why it structured the order in that fashion. As such, we cannot say that the trial court abused its discretion in its resolution regarding the Lemont property.

¶ 39 The trial court also expressed some concern that respondent was presenting the issue (limited, of course, to the Lemont property) for the first time in his motion to reconsider:

“With regards to the argument, also, that we could do it in a different fashion, okay, I suppose that there’s always different ways to handle how you handle these pieces of property. Frankly, no one suggested that as an option at the time of the closing arguments or, really, how to handle this property at all which its whole future is unknown. And I think to bring it up now on a Motion to Reconsider, hey, we should reargue this and we should re-do it in this fashion instead, I don’t think is the purpose of a Motion to Reconsider. In my mind, as I indicated, this is sort of like rearguing it now and saying, well, let’s do it in this way instead, when we had the opportunity at that time and [petitioner] could have responded at that time with her counter-argument as to how it should be done. So I think it kind of puts her in an unfair position now to say, hey, let’s redo it this way.

With regards—that’s the reason why I [am] denying the Motion to Reconsider with regards to [the] Lemont property.”

Thus, the trial court expressly denied the motion to reconsider on the ground that respondent was raising the contention for the first time in the case in his motion to reconsider, a decision well within the trial court's discretion. As well, the trial court's reasoned explanation of its rationale regarding its judgment on the Lemont property did not constitute an abuse of discretion.

¶ 40 For the foregoing reasons, we reject respondent's contention regarding maintenance and upkeep expenses for the three properties and affirm the judgment of the trial court.

¶ 41 **III. CONCLUSION**

¶ 42 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 43 Affirmed.