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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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In re MARRIAGE OF	)	Appeal from the Circuit Court
PETER T. SOTTILE, JR.,	)	of Kane County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No 10-D-504
	)	
DEBBYE SOTTILE,	)	Honorable
	)	Joseph M. Grady,
Respondent-Appellant.	)	Judge, Presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Presiding Justice Hudson and Justice Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court erred in granting summary judgment in favor of petitioner on the grounds that respondent's petition for maintenance was premature; reversed and remanded.
- ¶ 2 On October 19, 2012, the trial court entered a judgment of dissolution terminating the marriage of petitioner, Peter T. Sottile, Jr., and respondent, Debbye Sottile. The judgment reserved the right to Debbye to seek future maintenance under enumerated terms. On November 4, 2015, Debbye filed a petition for maintenance. Peter filed a motion for summary judgment. The trial court granted Peter's motion, finding that the petition for maintenance was

premature, as all of the conditions of the provision for maintenance had not been met. Following the denial of a motion to reconsider, Debbye appeals. We reverse and remand the cause for a hearing on Debbye's petition for maintenance.

¶ 3

### I. BACKGROUND

¶ 4 The maintenance provision incorporated into the judgment of dissolution did not award Peter any maintenance from Debbye. Nor was Debbye awarded any maintenance from Peter at the time the judgment was entered. However, the court reserved Debbye the right to seek future maintenance from Peter:

“after the marital home is sold to see what net proceeds share she receives and to see the future income of [Peter], including any social security benefits he may receive from a lifetime of employment, if and when he becomes eligible for same, and to see sworn certified financial statements from both parties at such time as [Debbye] may petition for a review of maintenance.”

¶ 5 On November 4, 2015, Debbye filed a petition seeking temporary and permanent maintenance. Both parties were 55 years old at the time the petition was filed. The petition was supported by a HUD settlement statement from the sale of the parties' marital residence, through which each party received \$104,000.

¶ 6 Peter filed a motion for summary judgment, contending that the petition for maintenance “should not have been filed by [Debbye] in that the same is not yet ripe for hearing.” Peter acknowledged that, although the marital residence had sold, he was “not yet receiving Social Security benefits.” The trial court held a hearing on the motion and an agreed bystander's report was filed in this court.

¶ 7 The trial court granted Peter’s motion for summary judgment, finding that there was no issue of material fact and stating in its written order that the filing of the petition was “premature at this time as all the conditions of the review of maintenance as set forth in the facts of the MSA have not been met.”

¶ 8 Debbye filed a motion to reconsider, which was denied. Debbye timely appeals.

¶ 9 II. ANALYSIS

¶ 10 We note that Peter did not file an appellee’s brief on appeal. “[I]f the appellant’s brief demonstrates *prima facie* reversible error and the contentions of the brief find support in the record[,] the judgment of the trial court may be reversed.” *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 11 Debbye contends that the trial court erred in granting summary judgment on the grounds that her petition for maintenance was premature. Debbye points out that the maintenance provision does not specifically state that application for and resolution of Peter’s ultimate and contingent receipt of Social Security retirement benefits is a condition or prerequisite for her seeking maintenance. Rather, she asserts that it sets the sale of the marital home “to see what net proceeds” were realized, and the future income of Peter, including what Social Security benefits upon retirement Peter “may receive,” and that being “if and when he becomes eligible for same.” She maintains that the trial court’s ruling effectively construes the relevant provision to require Peter to apply for and be awarded (or not awarded) old-age Social Security benefits before Debbye may seek maintenance pursuant to the dissolution judgment; that such an interpretation is neither supported by the language of the judgment, the policies and purposes of the Marriage and Dissolution of Marriage Act, or common sense.

¶ 12 Summary judgment is granted where “the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/s-1005(c) (West 2014). We review the trial court’s summary judgment determination using a *de novo* standard of review. *Wilkerson v. The County of Cook*, 379 Ill. App. 3d 838, 843 (2008).

¶ 13 In interpreting the provisions of a divorce decree, the normal rules for the construction of contracts are applicable. *Halper v. Halper*, 57 Ill. App. 3d 588, 591 (1978). The interpretation of a dissolution judgment presents a question of law which is subject to *de novo* review. *In re Marriage of Hendry*, 409 Ill. App. 3d 1012, 1017 (2011).

¶ 14 As stated, the maintenance provision set forth in the judgment of dissolution states that the court reserves Debbye the right to seek future maintenance from Peter:

“after the marital home is sold to see what net proceeds share she receives and to see the future income of [Peter], including any social security benefits he may receive from a lifetime of employment, if and when he becomes eligible for same, and to see sworn certified financial statements from both parties at such time as [Debbye] may petition for a review of maintenance.”

¶ 15 We agree with Debbye that the maintenance provision, while not a model of clarity, does not expressly state that application for and resolution of Peter’s ultimate and contingent receipt of Social Security retirement benefits is a condition or prerequisite for her seeking maintenance in addition to selling the marital home. Rather, the only condition to seeking any maintenance is the sale of the marital home. The provision specifically reserves Debbye the right to file a petition for maintenance from Peter after the marital home is sold so that, in determining whether to grant maintenance, the trial court may consider the net proceeds Debbye received from the

sale and the future income of Peter, including what Social Security benefits upon retirement Peter “may receive,” and that being “if and when he becomes eligible for same.”<sup>1</sup> Accordingly, the trial court erred in granting summary judgment in favor of Peter on the grounds that Debbye’s petition for maintenance was premature, and the cause must be remanded for a hearing on Debbye’s petition for maintenance. We express no opinion about the appropriateness of awarding maintenance.

¶ 16 On a final note, Debbye appears to argue that she has demonstrated a substantial change in circumstances allowing for modification of an order regarding maintenance under section 510 of the Marriage and Dissolution of Marriage Act (750 ILCS 5/510(a), (a-5) (West 2014). In post-dissolution of marriage proceedings, a trial court may grant only such relief as is sought in the pleadings. See *In re Marriage of Zukauskys*, 244 Ill. App. 3d 614, 618-19 (1993). Debbye’s petition for maintenance neither cited section 510 nor alleged a substantial change in circumstances. The petition only relied upon the language in the dissolution judgment which allowed Debbye to seek maintenance under the previously discussed conditions.

¶ 17

### III. CONCLUSION

¶ 18 For the preceding reasons, we reverse the judgment of the circuit court of Kane County granting summary judgment in favor of Peter and against Debbye and remand the cause for a hearing on Debbye’s petition for maintenance.

¶ 19 Reversed and remanded.

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<sup>1</sup> It is impossible to know at this time whether the parties will be able to produce evidence as to what benefits Peter may be entitled in the future, but this is what the judgment states.