

NOTICE  
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2017 IL App (5th) 160073-U

NO. 5-16-0073

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
TURNER ROUSE,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 13-D-570
	)	
RACHEL RECKER ROUSE,	)	Honorable
	)	Randall W. Kelley,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.  
Justices Goldenhersh and Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court did not abuse its discretion in awarding both parties their respective pensions rather than using the reserved jurisdiction method where the husband was to begin receiving his pension one month after the final hearing, and the wife, who would be eligible to receive her pension within two years after the hearing, did not know when she planned to retire and did not provide the court with easily obtainable evidence about her anticipated pension benefits.

¶ 2 The parties, Turner Rouse and Rachel Recker, formerly known as Rachel Recker Rouse, were married for 27 years before they separated. At the time of the final hearing, Turner was 59 years old and Rachel was 52 years old. Turner, who was self-employed as

an attorney and real estate agent, was eligible to begin drawing a military pension one month after the hearing. Rachel, who was employed as an attorney in the St. Clair County State's Attorney's office, did not know when she intended to retire. Rachel did not provide the court with any evidence as to the anticipated value of her pension plan. The court awarded each party their own pension benefits. Rachel appeals, arguing that the court abused its discretion by awarding each party their own pension rather than using the reserved jurisdiction method. We affirm.

¶ 3 The parties were married in August 1986. They had two daughters, born in 1991 and 1996. Both parties worked as attorneys. Turner was self-employed, and Rachel worked for the St. Clair County State's Attorney's office. Both parties had individual retirement accounts (IRAs). In addition, Rachel participated in the Illinois Municipal Retirement Fund (IMRF), and Turner was eligible to receive a pension for his military service.

¶ 4 Turner filed a petition for dissolution of marriage in July 2013. At that time, the parties' older daughter was an adult. Their younger daughter was still a minor when the petition for dissolution was filed; however, by the time this matter came for a final hearing, she was an adult.

¶ 5 After numerous continuances, the matter came for a final hearing on August 28, 2015. Several issues were before the trial court—distribution of the parties' property, allocation of their debts, Rachel's claim of dissipation by Turner, and Turner's request for retroactive child support—however, the only issue before this court is the court's distribution of the parties' pensions.

¶ 6 Rachel was 52 years old at the time of the hearing, and turned 53 a few months later. She testified that throughout the marriage, she earned less money than Turner. She began working at the State's Attorney's office in January 2001 with a salary of \$36,000 per year. Her salary at the time of the hearing was "fifty-seven-something" thousand dollars per year. Prior to working in the State's Attorney's office, Rachel spent eight years in private practice in Wyoming. She testified that she earned less money there than she did at the State's Attorney's office.

¶ 7 Rachel asked that the court award each party their own IRA. She believed that this was a fair disposition because Turner withdrew the lion's share of the funds in his IRA while this matter was pending, and the two accounts were "almost equal" before he made the withdrawals. She asked, however, that the court divide both her IMRF pension and Turner's military pension between the parties using the reserved jurisdiction method. She acknowledged that her entire pension was marital, while only 90% of Turner's pension was marital. She asked that the court divide both her pension and the marital portion of Turner's pension equally between the parties. Asked why she was requesting this disposition, Rachel replied, "Because it would really help me out to have that money now, and I'm willing to give him half of mine."

¶ 8 Rachel testified that she had not yet decided when she wanted to retire, but she indicated that she intended "to work as long as [she] can." She asserted that she did not know when she was eligible to begin receiving her pension benefits or what her monthly pension benefit would be. She acknowledged that she received statements from the IMRF, which she thought included this information; however, she stated that she had not

"really gotten that far." She noted that she planned to attend a retirement seminar after the dissolution case was over.

¶ 9 The following exchange took place between Rachel and counsel for Turner:

Q. So you are eligible to retire from IMRF in two years in December, right?

A. I really don't know because I had no plans to retire any time soon so I didn't check.

Q. Are you an IMRF tier one employee?

A. You know, I don't even know that.

Q. Okay. So you have no idea what your own retirement benefits are?

A. I get the statement every year and I look at it but I don't really pay much attention to it because it's not staring me in the face."

¶ 10 Turner turned 60 years old one month after the hearing. He testified that he was eligible to begin drawing his military pension at that time, and he intended to do so. He did not know the precise amount he would receive from the pension each month, but he indicated that it was between \$2100 and \$2200 per month. In a position statement filed prior to the hearing, Turner stated that his pension benefit would be \$2200 per month.

¶ 11 Turner testified that his law practice in Illinois consisted almost entirely of personal injury, workers' compensation cases, and federal criminal defense. He explained that this type of work was "cyclical," meaning that he had more work—and more income—some years than others. Exhibits showed that the income from his practice was \$133,370 in 2011, \$74,773 in 2012, \$44,439 in 2013, and \$77,415 in 2014. By the time of the

hearing, Turner had relocated to Florida. He testified that he intended to practice law and sell real estate there. He had obtained licenses to do both, but had not yet earned any income in Florida.

¶ 12 Turner acknowledged that his IRA was marital property. He admitted that he withdrew most of the funds from the account while this matter was pending, and he admitted that he did not seek leave from the court or discuss the matter with Rachel. The IRA had \$24,893 on April 30, 2014, but at the time of the hearing, only \$2,500 remained. Turner testified that he used these funds to pay the mortgage on the marital home.

¶ 13 Turner asked the court to award both parties their own pensions. Asked why he wanted his entire pension awarded to him, Turner noted that he would turn 60 years old the following month (and begin receiving his pension benefits), while Rachel could determine when—or if—she began receiving her pension. He explained that he needed his retirement benefits to make ends meet.

¶ 14 After the hearing, the court entered an order dissolving the parties' marriage. However, the court reserved ruling on the remaining issues. On September 15, 2015, the court entered a supplemental judgment of dissolution allocating the parties' assets and debts, denying Rachel's claim for dissipation, and denying Turner's claim for retroactive child support. In relevant part, the court awarded Turner the remainder of his IRA and his entire military retirement plan, and awarded Rachel her IRA and her entire IMRF retirement plan.

¶ 15 On October 13, 2015, Rachel filed a motion to reconsider or, in the alternative, a motion for rehearing and to reopen proofs. She argued that the court should divide the

parties' retirement benefits under the reserved jurisdiction method because the value of both parties' retirement plans was unknown.

¶ 16 On January 29, 2016, the court entered a detailed written order denying Rachel's posttrial motion. The court explained that the gist of Rachel's argument was that the court was *required* to award each party half of the marital portion of both pensions "because, and this is the crucial point, insufficient evidence of the present value of those [pensions] was presented at trial." The court noted that Turner filed a position statement on July 30, 2015—nearly one month before the hearing—in which he requested that the court award each party their own pension. He specifically argued that this was the best way to distribute the pensions because Rachel had not provided his counsel with any information on either the value or timing of her retirement. This statement, the court explained, gave Rachel ample notice that she should provide evidence about her anticipated pension benefits.

¶ 17 The court went on to explain that such evidence would have been easy for Rachel to supply. The court noted that in spite of Rachel's testimony that she did not know when she was eligible to retire, the Illinois Pension Code provided that she would be eligible to retire at age 55. See 40 ILCS 5/7-141(a)(1) (West 2014). The court also noted that IMRF information "was readily available" to Rachel. The court concluded that Rachel should not be allowed to benefit from her failure to provide this information. This appeal followed.

¶ 18 Rachel's sole argument on appeal is that the trial court abused its discretion because it did not use the reserved jurisdiction method to divide the parties' retirement

benefits. Under the reserved jurisdiction method, a trial court can order a party to pay a portion of each pension check to the other party when the pension benefits are received. The court retains jurisdiction to enforce its order. *In re Marriage of Britton*, 141 Ill. App. 3d 588, 591 (1986). Rachel argues that in this case, the court abused its discretion by not using the reserved jurisdiction method because that is the "preferred method" when dividing pensions that cannot easily be valued. She argues that, contrary to the court's finding that she failed to present it with readily obtainable evidence, it was impossible to value her pension due to the existence of uncertain factors (such as her date of retirement, her salary in her final year of service, and her life expectancy). Thus, she contends, the court abused its discretion in finding that her failure to provide evidence of her anticipated retirement benefits supported its decision to award each party their own pension. We are not persuaded.

¶ 19 The distribution of marital property is a matter within the trial court's discretion. This discretion includes the court's choice of the method used to apportion retirement benefits. *In re Marriage of Korper*, 131 Ill. App. 3d 753, 757 (1985). The two most common methods of apportioning pension benefits are the reserved jurisdiction method and the immediate offset method. *In re Marriage of Britton*, 141 Ill. App. 3d at 591. As noted previously, the reserved jurisdiction method allows a trial court to award each party a percentage of the marital portion of a pension and to reserve jurisdiction to enforce that award when the pension benefits are received. *Id.* Under the immediate offset method, the court determines the present value of the expected future pension benefits, awards the party his or her own pension, and awards the other party other marital property to offset

the value of the pension. *Id.* In this case, the court did not use either of these methods. The court noted during the hearing on Rachel's posttrial motion that it was not limited to these two methods, particularly in light of its considerable discretion. We will not reverse this decision absent an abuse of discretion. A trial court abuses its discretion only when "no reasonable person would take the view adopted by the trial court." *In re Marriage of Korper*, 131 Ill. App. 3d at 757.

¶ 20 Rachel acknowledges that the trial court has a great deal of discretion. She also acknowledges that the court is not required to place specific values on each item of marital property in order to achieve a just and equitable distribution. See *In re Marriage of Jerome*, 255 Ill. App. 3d 374, 393 (1994). She argues, however, that courts have "less leeway in dividing pensions without evidence of value." She posits that "this is because in many marriages[,] pension benefits are such a large asset compared to the value of other marital property." Although Rachel cites no authority in support of her contention that courts somehow have less discretion to divide pensions than they have in other matters, we agree that they must exercise great care in dividing pension benefits, particularly where they constitute a large portion of the marital estate, as is the case here. For the reasons that follow, however, we do not agree with Rachel's assertion that the court was required to use the reserved jurisdiction method to divide the pensions in this case.

¶ 21 Rachel calls to our attention several cases in which appellate courts have approved the reserved jurisdiction method. See, *e.g.*, *In re Marriage of Whiting*, 179 Ill. App. 3d 187, 191 (1989) (noting that the reserved jurisdiction method is "useful in those situations



where the amount of retirement benefits which will actually be paid out cannot be calculated with any certainty"); *In re Marriage of Britton*, 141 Ill. App. 3d at 592 (directing the trial court to use the reserved jurisdiction on remand after reversing on other grounds); *In re Marriage of Dooley*, 137 Ill. App. 3d 401, 406 (1985) (same); *In re Marriage of Fairchild*, 110 Ill. App. 3d 470, 476 (1982) (finding that "under the facts" of that case, it was "particularly appropriate to adopt the reserved jurisdiction approach" and directing the court to use that method on remand after reversing on other grounds); *In re Marriage of Wisniewski*, 107 Ill. App. 3d 711, 717-18 (1982) (explaining that when the immediate offset approach "proves impractical," courts can instead award each spouse a percentage of the pension to be paid if and when the pension benefits become payable). Rachel also points out that courts—including this one—have observed that the reserved jurisdiction method is the most commonly used method of dividing pensions. See *In re Marriage of Blackston*, 258 Ill. App. 3d 401, 406 (1994) (noting a "shift from the immediate offset approach to the reserved jurisdiction approach"); *In re Marriage of Korper*, 131 Ill. App. 3d at 760 (explaining that "the 'immediate offset' approach has been much more acknowledged than used"). She argues that the reserved jurisdiction method is therefore the "preferred method" for dividing pensions.

¶ 22 We are not persuaded by this argument. Rachel has cited no case holding that this method must be used in all cases, and we are aware of no such cases. It is worth noting that some of the cases cited by Rachel explicitly decline to create a bright line rule. See *In re Marriage of Britton*, 141 Ill. App. 3d at 592 (noting that the immediate offset approach is more appropriate under certain circumstances—including when the parties are

nearing retirement age); *In re Marriage of Korper*, 131 Ill. App. 3d at 760 (refusing to adopt a "unitary approach" to division of pensions); *In re Marriage of Wisniewski*, 107 Ill. App. 3d at 718 (remanding with directions for the trial court to determine which method it will use to divide a pension).

¶ 23 Rachel relies heavily on the case of *In re Marriage of Korper* in support of her contention that the court abused its discretion by opting not to use the reserved jurisdiction method in this case. We find that case distinguishable.

¶ 24 There, the parties were in their early forties when their marriage was dissolved, and two of their four children were still minors. The husband was a lieutenant-colonel in the United States Air Force, and the wife was a homemaker. *In re Marriage of Korper*, 131 Ill. App. 3d at 755. The trial court valued the husband's Air Force pension at \$296,000. *Id.* This figure was derived from the analysis of an actuary retained by the wife. The actuary's determination relied on assumptions about factors such as the husband's remaining years before retirement and his life expectancy. *Id.* at 758-59. The court determined that the wife's interest in the pension was \$145,000, and ordered the husband to pay that amount to her within 30 days after the final dissolution judgment was entered. *Id.* at 755. The husband appealed that decision to this court. *Id.* at 754.

¶ 25 On appeal, the husband argued that the trial court erred in dividing the pension in this manner. *Id.* He argued that it was inequitable to give the wife the full benefit of her interest in the pension immediately, while his interest was dependent upon several factors that were not certain—such as how many more years he would work and how many years he would live after retirement. *Id.* at 758. This court agreed. We noted that the actuary's

valuation of the pension plan necessarily depended on projections based on averages. *Id.* at 759. We found that by awarding the wife her entire share immediately, the trial court placed "the entire burden" of "any uncertainty the future may hold" on the husband. *Id.* We explained that this created a disparity between the parties. *Id.* at 760. We found that, in light of the fact that the husband's pension was a significant part of the marital estate, it was inequitable to place the entire burden of uncertainty on one party. *Id.* at 761. We thus concluded that the reserved jurisdiction method—which would leave both parties to share in the uncertainty—was the more reasonable method for apportioning the pension under the facts of that case. *Id.*

¶ 26 As Rachel points out, we noted that Illinois courts were often "hesitant" to use the immediate offset approach due to the inequity of placing the burden of uncertainty on one party. *Id.* at 760. However, we also were careful to emphasize that because the circumstances in dissolution cases vary, it would be inappropriate to limit courts to one approach in cases involving the division of pensions. *Id.* With this in mind, we turn to the differences between the case before us now and the circumstances involved in the *In re Marriage of Korper* case.

¶ 27 We find three key distinctions between this case and *In re Marriage of Korper*. First, here, unlike there, both parties expected to receive pension benefits. Second, the parties in this case were closer to retirement when their marriage was dissolved than the Korpers were when their marriage ended. Third, as the trial court explicitly found, Rachel failed to present the court with readily obtainable evidence that may have supported her position.

¶ 28 We first consider the significance of the first two of these factors—the fact that both parties have pensions and the fact that both parties are nearing retirement age. In this regard, we find instructive the Third District's discussion of the concerns involved in determining a fair allocation of pension benefits in *In re Marriage of Fairchild*. The court explained that while parties are married, pension benefits are a shared asset that spouses "consider to be their mutual security." *In re Marriage of Fairchild*, 110 Ill. App. 3d at 476. Upon dissolution, each party must be awarded "a just proportion of their shared retirement wealth" in light of this expectation of shared security. *Id.* As this court implicitly recognized in *In re Marriage of Korper*, the expectation of shared security includes an expectation that the parties will share in the risk of any uncertainty surrounding their eventual receipt of retirement benefits.

¶ 29 It is easy to see why the reserved jurisdiction method is usually the best way to address these concerns in a case like *In re Marriage of Korper*, where the parties were not nearing retirement and where only one party expected to receive a pension. There, the wife was a homemaker with no retirement income of her own to rely upon. Instead, she anticipated eventually sharing in her husband's pension benefits. There, the court did not have the option of awarding the wife a pension plan, so its only options were to divide the pension when it was paid to the husband (the reserved jurisdiction method) or to award the wife other property to offset the projected total value of the pension. As discussed earlier, the trial court chose the latter option, and we found this to be inequitable because it forced the husband to bear the burden of uncertainty

alone. *In re Marriage of Korper*, 131 Ill. App. 3d at 761. Such a result is at odds with the notion that retirement benefits represent a couple's shared security.

¶ 30 Here, by contrast, both parties had pensions. As Rachel points out, neither party presented the kind of actuarial evidence that was presented in *Korper*. Thus, it was impossible for the trial court to determine a "present value" for either pension. We note that our supreme court approved a similar disposition under similar circumstances in *In re Marriage of Evans*, 85 Ill. 2d 523 (1981). There, both parties had pension plans, and the trial court awarded each party their own pension without characterizing the pensions as either marital or nonmarital property. *Id.* at 526. The wife appealed. Among other things, she argued that the trial court erred in failing to characterize the property. The supreme court noted that the parties there did not present evidence that was sufficient to allow the trial court to determine a value for either pension plan. See *id.* at 531-33. It found that "[i]n view of the state of the evidence," the trial court's decision to award each party their own pension was not error. *Id.* at 532-33.

¶ 31 We believe a similar result is warranted here. As we noted earlier, there was some uncertainty surrounding both pensions. Turner knew that he would begin drawing his pension benefits the month after the hearing, and he knew that he would receive approximately \$2200 per month, but he did not know how long he would live. Rachel's pension involved somewhat more speculation because she had not decided when she would retire. She testified that the precise amount of her retirement benefits would depend on how many years she worked and her final salary.

¶ 32 Rachel argues that, because her pension involved more uncertainty than Turner's, the court's decision to award each party their own pension forced her to bear the burden of this uncertainty alone. We disagree. Much of the uncertainty surrounding Rachel's pension involves a factor within her control—the decision of when to retire. As discussed earlier, the Illinois Pension Code provides that Rachel will be eligible for retirement two years after the hearing. Thus, she can determine when she will begin receiving benefits after that time. If anything, using the reserved jurisdiction method would have forced Turner to bear a far greater burden of uncertainty than Rachel. This is because while Rachel would be certain to begin receiving one-half of Turner's pension benefits right away, Turner's right to receive half of Rachel's pension benefits would depend on a factor outside his control—when Rachel decides to retire. Considering these circumstances, we believe the court equitably allocated to each of the parties both the anticipated security provided by their pensions and the attendant risk of uncertainty.

¶ 33 Rachel argues, however, that the distribution was not equitable because Turner's pension benefits were likely to be significantly higher than hers. This is so, she contends, because his military pension was based on more years of service than her IMRF pension. We are not persuaded. Rachel admits that on the record before us there was no way for the court to determine what her pension benefits are likely be. As we will next discuss, this lack of evidence is due to Rachel's failure to provide the court with evidence that would have allowed it to make that determination. It is also worth noting that the court in fact awarded Rachel a larger share of the net marital estate, excluding the two pensions.

¶ 34 This brings us to the third difference between this case and *In re Marriage of Korper*—the fact that the lack of evidence of the value of Rachel's pension is the result of her own failure to provide the court with readily available evidence. Parties should not be allowed to benefit on appeal from their own failure to introduce evidence at trial. *In re Marriage of Abu-Hashim*, 2014 IL App (1st) 122997, ¶ 29; *In re Marriage of Smith*, 114 Ill. App. 3d 47, 54 (1983). It is the responsibility of parties to provide courts with sufficient evidence to value pension rights. *In re Marriage of Smith*, 114 Ill. App. 3d at 54.

¶ 35 Rachel acknowledges that this is the rule. She argues, however, that it is not applicable here because it was impossible to value her pension without knowing when she was going to retire or what salary she would be earning in her last year at work. We disagree. Rachel admitted that she received annual statements from IMRF that included information about her eligibility for retirement and her estimated benefits. This information would have been sufficient to allow the court to determine whether there was a significant enough disparity between the parties' anticipated pension benefits to require a different allocation. We do not believe Rachel should benefit from her failure to provide the evidence to support the allocation of the pension plans she requested. We find no abuse of discretion in the court's decision to divide the property as it did.

¶ 36 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 37 Affirmed.