

NOTICE

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FILED

November 27, 2018
Carla Bender
4th District Appellate
Court, IL

2018 IL App (4th) 170934-U
NOS. 4-17-0934, 4-18-0137

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

<i>In re</i> MARRIAGE OF)	Appeal from the
LINDA I. VAN HOOK, n/k/a LINDA I. OSTEN,)	Circuit Court of
Petitioner-Appellant,)	Pike County
and)	No. 07D71
ERNEST K. VAN HOOK,)	
Respondent-Appellee.)	Honorable
)	John Frank McCartney,
)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* The circuit court committed no error in calculating the pension amount from the date of marriage through petitioner’s date of retirement or in its decision relating to credit card debt and a property loan.
- ¶ 2 In February 2010, the trial court dissolved the 44-year marriage of petitioner, Linda I. Van Hook, now known as Linda I. Osten, and respondent, Ernest K. Van Hook. The judgment of dissolution of marriage allocated Linda’s pension equally between the parties. In addition, the court ordered Ernest to pay credit card debts and a \$20,000 loan for property that was awarded to him.
- ¶ 3 In November 2017, the trial court entered an order calculating Linda’s pension payments to Ernest from the date of the marriage to the date of her retirement. The court also found Chase Bank had forgiven a debt that Ernest failed to pay as ordered. Further, the court

found that Linda paid off a \$20,000 loan that Ernest neglected to pay. Linda appeals, arguing (1) the court erred in finding that she should pay Ernest pension benefits accrued after the divorce; (2) the court lacked jurisdiction to modify the allocation of her pension benefits; and (3) she was entitled to “compensation” in light of Ernest’s failure to pay credit card debts and the \$20,000 loan as ordered. We affirm.

¶ 4

I. BACKGROUND

¶ 5 The parties were married on July 15, 1966. On December 13, 2007, Linda filed her petition for dissolution of marriage. The parties have three children who were emancipated at the time of the divorce proceedings.

¶ 6 The evidence showed that, during the marriage, Linda was employed as a school bus driver from September 1991 through February 1993 and she participated in the Illinois Municipal Retirement Fund (IMRF) pension plan. Additionally, for part of the marriage, Linda worked for the Illinois Department of Corrections beginning in April 1996. At the time of the divorce proceedings, it was anticipated that Linda would retire from this position in April 2010; however, she did not retire until April 2016. Through her employment with the Illinois Department of Corrections, Linda was entitled to a pension from the State Employees’ Retirement System (SERS). Ernest was a self-employed contractor with no retirement benefits.

¶ 7 On July 27, 2009, the trial court set forth its findings with respect to the distribution of the parties’ marital assets. In pertinent part, the court noted that debt had been incurred during the marriage and Ernest was “responsible for much of the financial manipulating,” and thus, the credit card debt was assigned to him. With respect to Linda’s two retirement pensions, the court noted that Ernest’s expert witness valued Linda’s total pension

from IMRF and SERS to be \$255,221.56 as of September 10, 2008. The court stated Linda's pension would be divided "equally by a [Qualified Illinois Domestic Relations Order (QILDRO)]."

¶ 8 On February 24, 2010, the trial court entered a judgment of dissolution of marriage. The court awarded 65% of the marital estate to Linda and 35% to Ernest. The court awarded the marital residence to Linda, and it awarded Ernest property located at 631 Williams Street, Barry, Illinois ("the Williams property"). The court again ordered that Ernest "shall be responsible for the credit card debt and the debt to the bank." Further, the court ordered that Linda's pension "shall be divided equally through a [QILDRO] ***." The court "retain[ed] jurisdiction over the parties hereto and the subject matter herein for purposes of entering a [QILDRO] ***." The court also ordered that it "shall maintain jurisdiction" to "[e]nsure compliance herewith or modification hereof."

¶ 9 Following the divorce, Linda continued working for the Department of Corrections until April 2016. On July 7, 2016, Ernest filed a motion alleging that Linda had retired and she was receiving the entire pension amount. Ernest requested that the trial court order Linda to pay him his allocated share of the pension benefits.

¶ 10 On August 8, 2016, Linda filed a petition to show cause, asserting that Ernest had not paid the loan for the Williams property as ordered by the trial court and she had been forced to pay the loan herself. She further asserted that Ernest had failed to pay the Chase credit card debt, which had a balance of \$15,447. Linda requested that her pension obligations to Ernest be offset in light of Ernest's failure to pay the Chase credit card debt and the loan for the Williams property.

¶ 11 In February 2017, the trial court conducted hearings in the matter. Linda testified that she received late payment notices for the Williams property, so she paid off the loan because she was worried about her employer learning that she had failed to make payments on a loan that was associated with her name. She stated that Ernest “refused” to make the payments. She further testified that she discovered Ernest had also failed to make payments on the Chase credit card as ordered. She stated that she had not made any payments on the Chase credit card.

¶ 12 Ernest testified that he paid the Chase credit card “for a while” until he was unable to make the payments. He stated that Chase Bank eventually forgave the credit card debt. He also acknowledged that he did not make any payments on the Williams property.

¶ 13 In July 2017, the trial court entered an order, finding Linda’s testimony credible on the issue of the Chase credit card debt. The court found that Ernest was mistaken that the credit card debt had been forgiven, and it awarded Linda a \$15,447 credit toward her pension payments to Ernest. The court further found that Linda should be credited \$20,000, which reflected the amount Linda paid on the Williams property, less one-half of the amount of equity in the property owed to Ernest. With respect to the pension, the court stated that “the value of the pension should be on the date of the [j]udgment [of dissolution] as asserted by [Linda].” The court stated that “[i]t is expected that the credit [to Linda] will exceed what [Ernest] is owed for the pension and a judgment will be entered in *** favor of [Linda].”

¶ 14 On August 7, 2017, Ernest filed a “post-order motion,” arguing that he was entitled to benefits from the date of Linda’s retirement. He stated that it was originally anticipated that Linda would retire in April 2010 but she did not retire until April 2016. He argued that the value of the marital portion of the pension should be enhanced to the benefit of

both parties. He further argued that Linda was not entitled to a credit for payment of the Williams property loan or the Chase credit card debt.

¶ 15 On November 20, 2017, the trial court entered an order granting Ernest's motion. The court determined that the pension allocation would be calculated from the date of marriage through the date of retirement. The court ordered as follows: "Effective immediately, [Linda] is directed to pay the monthly amounts due [to Ernest] until the QILDRO and [c]alculation [o]rder[] are accepted by SERS and IMRF which is \$1,194.82 per month for SERS and \$157.67 per month for IMRF." The court further found that, following the hearing on the parties' motions, it was discovered that Chase Bank had, in fact, forgiven the credit card debt in 2009. Thus, the court stated that it would remain a debt of Ernest's but Linda would not receive reimbursement for it unless she made payments on it in the future. With respect to the Williams property, the court stated that respondent defaulted on the loan and "should not be entitled to receive the full amount of the equity in the home ***." However, the court stated, "[I]t seems apparent that even with a credit of \$20,000 to be awarded to [Linda,] *** [she] will now owe [Ernest] money as the pension benefits for which [Ernest] is entitled will exceed her credit." The court stated the issue regarding the \$20,000 owed for the Williams property was therefore moot.

¶ 16 On December 6, 2017, Linda filed a motion to reconsider and clarify, arguing the judgment of dissolution stated that the court would divide the pension equally by a QILDRO. She argued that the judgment of dissolution was entered in February 2010 and the amount of pension benefits paid to Ernest should be valued as of that date.

¶ 17 On December 19, 2017, Linda filed a notice of appeal, challenging the trial court's order entered on November 20, 2017.

¶ 18 On December 29, 2017, the trial court entered an order correcting the amount that Ernest was entitled to receive from the IMRF pension. Both parties conceded that the court had incorrectly awarded Ernest the total amount of Linda’s IMRF pension instead of the 50% that he was actually owed. With respect to Linda’s argument that the pension benefits should be calculated from the date of the divorce, the court stated that it would “review the transcript of the trial to determine if it was the ruling of the [previous trial judge] to divide the pension interest prior to vesting ***.”

¶ 19 On February 20, 2018, the trial court entered an order finding that Ernest was entitled to the benefit of Linda’s increased pension as of the date of her retirement. With respect to the \$20,000 credit for the Williams property, the court stated as follows:

“However, as the [c]ourt has previously noted, the [c]ourt believes it will be more difficult to obtain reimbursement from [Ernest] for an overpayment by [Linda] if the [c]ourt’s decision is not upheld by the [a]ppellate [c]ourt and [Linda] is correct on her retirement calculation. [Linda] has consistently paid debts owed in this case; whereas [Ernest] has chosen not to do so. If [Ernest’s counsel] is correct on his calculation, [Linda] would currently owe [Ernest] approximately \$9,300. If [Linda’s counsel] is correct ***, the money owed to [Ernest] at the present time would still fall short of the \$20,000.00 credit by approximately \$3,500. *** Therefore, beginning March 5th, 2018, [Linda] is directed to pay to the [c]ircuit [c]lerk the amount of \$750.00 per month which would closely represent the amount [Linda] contends is owed each month to [Ernest] from the two pensions ***.”

¶ 20 On February 27, 2018, Linda filed a second notice of appeal challenging the trial court's orders entered on November 20, 2017, and February 20, 2018.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, Linda argues that (1) the court erred in finding that she should pay Ernest pension benefits accrued after the divorce; (2) the court lacked jurisdiction to modify the allocation of her pension benefits; and (3) she was entitled to “compensation” in light of Ernest's failure to pay credit card debts and the \$20,000 loan as ordered.

¶ 24 A. The Trial Court's February 2018 Order

¶ 25 Before we address the merits of Linda's appeal, we must first address this court's jurisdiction to hear it. See *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009) (“A reviewing court must ascertain its jurisdiction before proceeding in a cause of action, regardless of whether either party has raised the issue.”) On appeal, Linda challenges two orders dated November 20, 2017, and February 20, 2018. We note, however, that Linda filed her first notice of appeal on December 19, 2017, *before* the trial court entered the February 2018 order. We find the trial court lacked jurisdiction to enter the February 2018 order.

¶ 26 Our supreme court has stated that once a party files a notice of appeal, the trial court loses jurisdiction over the matter:

“A notice of appeal is a procedural device filed with the trial court that, when timely filed, vests jurisdiction in the appellate court in order to permit review of the judgment such that it may be affirmed, reversed, or modified.

Steinbrecher v. Steinbrecher, 197 Ill. 2d 514, 527 n. 4 (2001). Once the notice of appeal is filed, the appellate court’s jurisdiction attaches *instanter*, and the cause of action is beyond the jurisdiction of the circuit court. *Daley v. Laurie*, 106 Ill. 2d 33, 37 (1985). The circuit court, however, retains jurisdiction after the notice of appeal is filed to determine matters collateral or incidental to the judgment.” *Gen. Motors Corp. v. Pappas*, 242 Ill. 2d 163, 173–74, 950 N.E.2d 1136, 1142 (2011).

¶ 27 As stated, per *General Motors*, Linda’s filing of the notice of appeal on December 19, 2017, divested the trial court of jurisdiction to determine matters that were not collateral or incidental to the judgment. The matters addressed by the court in Linda’s motion to reconsider cannot be considered as “collateral or incidental to the judgment.” *Id.* at 174. In fact, they were the same matters addressed in Linda’s December 19, 2017, notice of appeal. Therefore, the court’s order of February 20, 2018, regarding Linda’s motion to reconsider is void, and her notice of appeal regarding this same order is ineffective. The only order properly under review is the November 20, 2017, order.

¶ 28 B. Pension Benefits

¶ 29 Linda contends the judgment of dissolution of marriage allocated her pension benefits between the parties from the date of the parties’ marriage through the date of the divorce—not the date of her retirement. She maintains that Ernest is not entitled to pension benefits earned after the date of dissolution.

¶ 30 Generally, a pension benefit defers compensation to an employee until a future date. *In re Marriage of Abma*, 308 Ill. App. 3d 605, 615, 720 N.E.2d 645, 653 (1999). “Pension benefits earned during the course of the marriage are considered marital property despite the fact

that they may not actually be distributed until after the dissolution of the marriage.” *Id.* When a court postpones the division of the pension until it is received by the employee-spouse, “the nonemployee-spouse forgoes the benefits of having the asset at the time of the dissolution.” *In re Marriage of Ramsey*, 339 Ill. App. 3d 752, 759, 792 N.E.2d 337, 343-44 (2003). Further, “both parties share the risk that the employee-spouse will change jobs or die before retiring, which may reduce the pension substantially or forfeit the benefits completely.” *Id.* “Given that the parties necessarily share these inherent risks when the division of the pension is postponed, it is only equitable that they share in the benefits of unforeseen increases in the value of the pension as well.” *Id.* We will not disturb the trial court’s choice of apportionment method of a pension absent an abuse of discretion. *In re Marriage of Wisniewski*, 286 Ill. App. 3d 236, 243, 675 N.E.2d 1362, 1368 (1997).

¶ 31 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.) *Id.* at 240-41. First, 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.* “ ‘This method is best only where the [employee spouse] is close to mandatory retirement age or retirement is otherwise imminent, and there are sufficient other marital assets to allow an offset to the non[employee-]spouse.’ ” *Id.* at 241 (quoting *In re Marriage of Wisniewski*, 107 Ill. App. 3d 711, 717, 437 N.E.2d 1300, 1305 (1982)).

¶ 32 Second, 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. *Wisniewski*, 286 Ill. App. 3d at 241. “Instead, it 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.” *Id.* (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)).

¶ 33 Linda argues the trial court used the cash out approach in its February 24, 2010, judgment of dissolution while Ernest appears to argue that the court used the reserved jurisdiction approach. Although it is not clearly stated, we find the court employed the reserved jurisdiction approach. In this case, Linda was not immediately awarded the entirety of the pension benefits at the time of the divorce; rather, the judgment of dissolution stated that the pension “shall be divided equally” between the parties “by [a QILDRO] ***.” Additionally, it appears Ernest did not receive other marital property in lieu of pension benefits. In fact, the record reflects that Ernest was only awarded 35% of the marital estate, and Linda was awarded the majority of the marital estate. Further, contrary to Linda’s assertions, the judgment of dissolution stated that the court retained jurisdiction to enter the QILDRO, and the court “shall

maintain jurisdiction” to “[e]nsure compliance herewith or modification hereof.” Accordingly, we find the court reserved jurisdiction to later allocate the pension benefits through a QILDRO.

¶ 34 As stated, Linda maintains that Ernest is only entitled to pension benefits through the date of the divorce in February 2010. Ernest contends that he should receive pension benefits through the date of Linda’s retirement in April 2016. In support of his position, Ernest cites to this court’s decision in *In re Marriage of Wisniewski*, 286 Ill. App. 3d 236, 675 N.E.2d 1362 (1997). In that case, on remand, the trial court entered a judgment awarding half of the petitioner’s pension benefits to his ex-wife “if, as, and when it becomes vested in and payable to [the petitioner].” (Internal quotation marks omitted.) *Id.* at 239. Petitioner retired thirteen years after the divorce. *Id.*

¶ 35 On appeal, the petitioner in *Wisniewski* argued “that the marital interest in the pension should be limited to the amount of his salary at the time of the 1981 divorce, and that any increase in pension benefits due to a higher salary are due solely to his post-marital efforts.” *Id.* at 245-46. The court found that, contrary to the petitioner’s assertions, his ex-wife was entitled to his pension benefits through the date of retirement. *Id.* at 246-47. This court stated, in pertinent part, that “Illinois law has long recognized the time value of money.” *Id.* at 244. “[P]art of the benefits [petitioner] accrued after the dissolution were due to contributions made during the marriage.” *Id.* at 247. The court stated, “We cannot say the years after the marriage were more valuable than the years during the marriage. Because of the time value of money, the opposite would appear to be true ***.” *Id.* at 245.

¶ 36 Here, just like *Wisniewski*, part of the pension benefits that Linda accrued after the divorce were due in part to contributions made during the marriage. *Id.* at 247. Further,

because both parties shared the inherent risk of postponing the receipt of pension benefits, it is only equitable that both parties share in the benefits of unforeseen increases in the value of the pension benefits where, as here, Linda chose to continue working for six additional years. See *Ramsey*, 339 Ill. App. 3d at 759. Accordingly, we find the trial court's November 2017 order apportioning pension benefits through the date of Linda's retirement was not an abuse of discretion.

¶ 37

C. Unpaid Debts

¶ 38 Linda next argues that “the trial court abused its discretion by not compensating [Linda] for her damages when [Ernest] failed to comply with the February 24, 2010, judgment.” Specifically, Linda points out that Ernest failed to pay (1) the Chase credit card with a balance of \$15,447 and (2) the \$20,000 loan for the Williams property that Linda ultimately paid herself.

¶ 39 Here, the judgment of dissolution of marriage stated that Ernest was required to pay the Chase credit card debt and the loan for the Williams property. Linda later filed a motion requesting that any distributions of her pension payments to Ernest be offset in light of his failure to pay his debts as ordered. In November 2017, the trial court entered an order finding that Chase Bank had forgiven the credit card debt and was no longer pursuing collection. The court further stated that the credit card debt “will remain a debt of [Ernest's]” and “[i]f for some reason *** [Linda] would pay this debt or any portion thereof, [Ernest] would be responsible for reimbursement to [Linda] for any money paid.” Because the record reflects that Linda did not make any payments on the Chase credit card debt, she is not entitled to any reimbursement for the Chase credit card debt that was eventually forgiven by Chase Bank. We agree with the trial court and find that Linda did not establish she is entitled to reimbursement related to the Chase

credit card debt in light of the fact that Chase Bank forgave the debt.

¶ 40 Finally, the record reflects that Ernest did not comply with the judgment of dissolution of marriage where he failed to pay the \$20,000 loan on the Williams property. Linda paid the \$20,000 debt herself. In November 2017, the trial court entered an order stating that “it seems apparent that even with a credit of \$20,000 to be awarded to [Linda][,] *** [she] will now owe [Ernest] money as the pension benefits for which [Ernest] is entitled will exceed her credit.”

¶ 41 Contrary to Linda’s apparent claim, it appears the trial court recognized Linda’s payment of \$20,000 and determined it should serve as an offset against any pension distribution to Ernest.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the trial court’s judgment.

¶ 44 Affirmed.