2020 IL App (2d) 200071-U
No. 2-20-0071
Order filed February 28, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re MARRIAGE OF LISA M. OBERHEIDE,	)	Appeal from the Circuit Court
	)	of Lake County.
Petitioner-Appellee,	)	
	)	
and	)	No. 18-D-292
	)	
JAMES L. OBERHEIDE,	)	Honorable
	)	David Christopher Lombardo,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Burke and Bridges concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in granting petitioner's motion for a preliminary injunction over certain of respondent' employee benefits that recently vested. Affirmed.

¶ 2 In this interlocutory appeal under Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017) (interlocutory appeals as of right; appeal from an interlocutory order "granting, modifying, refusing, dissolving, or refusing to dissolve or modify an injunction"), respondent, James L. Oberheide, appeals from the trial court's granting of petitioner's, Lisa M. Oberheide's, request for a preliminary injunction to escrow/freeze assets (*i.e.*, James' interest in certain employee benefits awarded to him by his employer, Morgan Stanley) that were due to vest in January and February

2020. James argues that the trial court erred in granting the preliminary injunction, where, on the underlying issue, the court erred in interpreting the parties' agreement, which explicitly allocated certain vested benefits (58% to Lisa and 42% to James) and, in his view, implicitly allowed all of the unvested benefits to remain James' property. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The parties were married on May 25, 1991, and their marriage was dissolved on June 25, 2019. Their marital settlement agreement (MSA), which was incorporated into the dissolution judgment, states that each party: was represented by counsel, was informed of their rights, was conversant with all of the property and income possessed by the other party, read the MSA and had each provision explained by counsel, and voluntarily entered into the agreement. Lisa's counsel prepared the initial draft of the MSA, and on May 25, 1991, prior to execution, the parties made several handwritten changes and initialed them to indicate their assent.

¶ 5 The MSA's maintenance provision states that James would initially pay Lisa $12,201 per month in maintenance (calculated on his $479,928 average net income) with annual true ups/downs. Lisa's income was stipulated to be $12,000 from her non-marital rental income. The MSA further provides that James' growth awards be treated as income (they are typically taxed over a five-year period) and that Lisa immediately receive 33% of the gross of the initial lump sum growth awards. In a handwritten provision, the agreement further provides that the "true-up or true[-]down shall be done to provide [that] the total Lisa receives as maintenance is 33% of [James'] net after tax income as defined herein after off-setting her income[.]"

¶ 6 The MSA states, in paragraph 8.1 that the following property was allocated to Lisa:

> "j. 57% of the Morgan Stanley Compensation Incentive Plan [MSCIP] as ~~*exists*~~ *vested* as of today's date if and when distributed. Any future deferred compensation awards

shall be distributed as income pursuant to the Maintenance section *[i.e. 33%]* when distributed, subject to the tax terms set out in the maintenance section (*i.e.*[,] in post-tax dollars).

k. 58% of the Morgan Stanley Stock Units *vested as of today's date*, with transfers in kind." (Emphases added to note the parties' handwritten modifications.)

¶ 7 In paragraph 8.2, the following property is allocated to James:

"h. 42% of the [MSCIP], *vested as of today's date*.

i. 42% of the Morgan Stanley Stock Units, *vested as of today's date*." (Emphases added to note the parties' handwritten modifications.)

¶ 8 The MSA further provides:

"8.3 The parties agree and acknowledge that if any asset or account is discovered after the entry of the Judgment of Dissolution of Marriage and is marital in whole or in part, and is not covered by this [MSA] due to either error, mistake or fraud, that the marital portion of the asset or account will be divided 58%(LISA)/42% (JAMES) between the parties by this Court."

¶ 9 Paragraph 8.4 states that Lisa "agrees that her acceptance of the property set forth in this [MSA] represents a full and final settlement of any claims she may have in and to any of the property, either marital or non-marital, now owned or hereinafter acquired by [James], whether real, personal or mixed." A corresponding provision set forth James' acceptance of the property allocation.

¶ 10 A. Lisa's Motion to Clarify the Judgment

¶ 11 On July 25, 2019, one month after the dissolution judgment and the execution of the MSA, Lisa moved to clarify the dissolution judgment (735 ILCS 5/2-1203 (West 2018) (in non-jury

cases, "any party may, within 30 days after the entry of the judgment ***, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief")). Lisa noted that, about May 2019, she had obtained new counsel after her first set of attorneys withdrew. Lisa asserted that, due to the "complex" nature of James' compensation package from Morgan Stanley and in the interest of avoiding future litigation, she sought to clarify the parties' obligations concerning: (1) the calculation and payment of her maintenance and payment of the children's expenses, which are not at issue in this appeal; and (2) the property division, which is at issue in this appeal.

¶ 12 As to the property division and this appeal, Lisa argued that two marital assets were inadvertently left out of the MSA: (1) *unvested* MSCIP awards; and (2) *unvested* Morgan Stanley Stock Units. She argued that paragraph 8.1(j) of the MSA awards her 58% of the *vested* MSCIP awards and states that all *future* deferred compensation awards shall be distributed pursuant to the maintenance provision. However, according to Lisa, the paragraph is silent as it relates to *past* awards that are *not vested*. Lisa further asserted that "[a]ccording to a document dated January 18, 2019, past awards of the MSCIP vest in January and February of 2020 and will continue to vest through at least January of 2024. As of January 18, 2019, the total value of the past unvested awards totaled $587,985 and the [awards'] vested value was *zero*." (Emphasis in original.) (She did not attach to her motion a copy of the document.)

¶ 13 Turning to the Stock Units, Lisa noted that the MSA awarded her 58% of the vested units and awarded James 42% of the vested units, but was silent as to the unvested Stock Units. Again referencing "a document dated January 18, 2019," Lisa argued that past awards of Stock Units will vest in 2020 and continue to vest through 2022. She also asserted that, according to the document, the unvested value (as of January 18, 2019) was $157,299 and the vested value was zero. Lisa

maintained that the MSA divides two assets with a zero value, but is silent as to two assets with an approximate $750,000 combined value. Referencing section 503 of the Illinois Marriage and Dissolution of Marriage Act (Dissolution Act) (750 ILCS 5/503 (West 2018)), Lisa noted that unvested MSCIP awards and Stock Units are presumed to be marital assets subject to division. She also referenced section 8.3 of the MSA, which provides that, if any assets are discovered after entry of the dissolution judgment and are marital, and not covered by the MSA due to error, mistake or fraud, they will be divided 58% to Lisa and 42% to James. She argued that she *discovered* two erroneously-missing assets subsequent to entry of the dissolution judgment and asserted that the MSA should be clarified to provide that she should receive 58% of the unvested MSCIP awards earned during the marriage and the unvested Stock Units earned during the marriage.

¶ 14 James, on August 16, 2019, moved to strike and respond to Lisa's motion. 735 ILCS 5/2-615, 2-1203 (West 2018). He initially argued that Lisa's "motion" was actually a pleading subject to a motion to strike because it actually sought new relief in the form of property interests not specifically awarded to her. Further, he noted (and Lisa does not dispute) that the MSA was originally drafted by Lisa's counsel and both parties made changes to it. He argued that the MSA's terms were not ambiguous or uncertain and, thus, did not require clarification. Lisa was merely, in his view, seeking to materially change the agreement after the fact. Addressing the primary issue of the unvested MSCIP awards and the unvested Stock Units, James argued that, before the changes that both parties agreed to, the MSA had read that Lisa was entitled to "58% of the [MSCIP] as exists as of today's date if and when distributed" and "58% of the Morgan Stanley Stock Units, with transfers in kind." In his view, Lisa is now claiming that she is entitled to the original language, not the modified language in the final, executed version of the MSA. James

argued that Lisa cannot change what she specifically bargained for under the guise of clarification. The provision specifying that Lisa would receive 58% of only vested MSCIP awards and Stock Units would control, he asserted, over any general provision purportedly giving her rights to unvested MSCIP awards and Stock Units (not that any such provision exists, he contends). Further, he argued that the specific allocations of vested benefits to Lisa implies that James receives his unvested benefits under the MSA. James further maintained that he has no present interest in the unvested stock, and he needs to continue working for Morgan Stanley for the stock to become vested and, absent his future efforts, the unvested stock has no value. They do not have a $750,000 value as Lisa suggested. Finally, James noted that the benefits were not unknown during negotiations. Lisa's counsel had sent multiple subpoenas to Morgan Stanley addressing the subject, conducted a management interview with a court reporter present, and reviewed the subpoenaed material, which included the unvested units.

¶ 15 In response, Lisa asserted that the unvested benefits were awarded to no one and the MSA is silent as to that property. Further, she argued that there are no vested benefits and the fact that marital assets of significant value—the unvested benefits—were not specified and that Lisa was awarded 58% of nothing was an error. She also maintained that there is no language in the MSA stating that, if an asset is not specifically identified, it is awarded to the party with title. In fact, she argued, paragraph 8.3 specifies that, if an asset is excluded from the MSA by error, the marital portion is to be divided 58% to Lisa and 42% to James. Finally, as to the Stock Units, she again argued that the Dissolution Act provides that unvested stock awards accrued during the marriage are presumed to be marital property and subject to division, whether or not their value is ascertainable.

¶ 16 In his reply, James argued that Lisa offered no argument as to how or why any of the MSA provisions that she seeks to clarify are ambiguous. He also noted that paragraph 8.3 applies to assets that are discovered after the entry of the dissolution judgment and argued that Lisa is not protected for known assets not awarded to her. James asserted that his assets are either vested or unvested and that the awarding of only vested interests to Lisa clearly indicates that James receive his unvested benefits. The unvested stock, he urged, is not subject to division now, where the parties agreed to divide only *vested* stock.

¶ 17 On October 21, 2019, the trial court denied James' motion to strike and dismiss Lisa's motion. On December 10, 2019, the court set a March 9, 2020, hearing date on Lisa's motion to clarify and gave her leave to file a motion to escrow and/or freeze the disputed assets that will vest.

¶ 18 B. Lisa's Motion to Escrow/Freeze Assets

¶ 19 On December 17, 2019, Lisa moved to escrow and/or freeze assets, seeking a preliminary injunction. 750 ILCS 5/501 (West 2018) (dissolution action stay). She attached a Morgan Stanley document, dated January 18, 2019, reflecting that the value of unvested MSCIP awards was $587,985 and unvested Stock Units was $157,299 as of that date. She argued again that the unvested interests in both assets, which were marital assets awarded during the marriage, were not awarded, where the MSA was silent as to these marital assets. Lisa further asserted that: (1) in February 2020, about $21,762 in MSCIP awards will vest; (2) on January 27, 2020, 1,539 Stock Units will vest; and (3) on February 2, 2020, another 692 Stock Units will vest, for a total of about $96,326. Based on this schedule, she asserted, James will take possession and control of newly-vested assets prior to the time that Lisa's motion to clarify can be heard and adjudicated by the trial court (again, on March 9, 2020). If James is allowed to take possession and control, she argued, she would be irreparably harmed and prejudiced. Lisa asserted that she has a clearly-

protectable property interest in the unvested assets. Until such time as her motion to clarify can be adjudicated, the status quo must be maintained as it relates to those assets. Lisa asked that, upon their vesting, the assets be escrowed and/or frozen until the trial court hears her motion and that both parties be restrained from accessing, transferring, encumbering, concealing, or otherwise disposing of the funds until adjudication of the motion to clarify. She further asserted that she will suffer irreparable harm if the funds are not frozen or escrowed, because James will be in unilateral control of the newly-vested assets and, if he dissipates or conceals them, Lisa may not be able to be made whole. In contrast, she argued, James will suffer no harm if Lisa is granted the relief she seeks, because she is merely seeking to preserve the marital assets that were inadvertently left out of the MSA and maintain the status quo until the court rules. She also argued that she showed a great likelihood of success on the merits of her motion to clarify, which is supported by the MSA and the Dissolution Act. Finally, Lisa asserted, without explanation, that there is no adequate remedy at law.

¶ 20 In his response, James argued that Lisa was not entitled to a preliminary injunction, where: (1) Lisa has no protectable interest in any assets vesting after the prove-up; (2) even if she has a protectable interest, there is no irreparable injury where money damages are available; (3) money damages are an adequate remedy at law that precludes injunctive relief and her assertions otherwise are based on pure speculation that she may not be able to be made whole; and (4) there is no likelihood that Lisa will prevail. Further, James asserted that the balancing of the harms weighed in his favor, and he again argued that Lisa's motion was procedurally flawed.

¶ 21 C. Trial Court's Injunction Order

¶ 22 On January 24, 2020, the trial court enjoined James from disposing of 60% of the MSCIP awards set to vest in February 2020; 60% of the Stock Units set to vest on February 2, 2020 (416

Stock Units); and 60% of the Stock Units set to vest on January 27, 2020 (924 Stock Units). The court found that Lisa has a protectable property interest in the unvested Stock Units and unvested MSCIP awards; that she will suffer irreparable harm if the unvested assets are not escrowed and James is restrained from disposing of them prior to adjudication of her motion to clarify; Lisa has no adequate remedy at law; and there is a strong probability of success on the merits on her motion to clarify. James appeals.

¶ 23 II. ANALYSIS

¶ 24 James argues that the trial court erred in granting Lisa a preliminary injunction as to the unvested benefits. For the following reasons, we reject James' argument.

¶ 25 The purpose of a preliminary injunction is not to determine the controverted rights or decide the merits of the case, but rather, its function is to preserve the rights of the parties or the state of affairs legally existing just prior to the motion for a preliminary injunction until the case can be decided on the merits. *Kalbfleisch v. Columbia Community Unit School District No. 4*, 396 Ill. App. 3d 1105, 1112 (2009). Thus, the plaintiff need not carry the same burden of proof that is required to support the ultimate issue. *Stenstrom Petroleum Services Group, Inc. v. Mesch*, 375 Ill. App. 3d 1077, 1089 (2007). The proof required for issuance of a preliminary injunction requires a plaintiff to show that a "fair question" exists regarding the claimed right, and that the court should preserve the status quo until the case can be decided on the merits. *Lifetec, Inc. v. Edwards*, 377 Ill. App. 3d 260, 268 (2007).

¶ 26 A preliminary injunction requires a showing by a preponderance of the evidence that the plaintiff: (1) has a clearly-ascertainable right needing protection, (2) will suffer irreparable harm without protection, (3) has no adequate remedy at law, and (4) is likely to succeed on the merits. *Id.* Once the plaintiff establishes the four elements, the trial court must also balance the equities

to determine the relative inconvenience to the parties and whether the burden upon the defendant, should the injunction issue, outweighs the burden to the plaintiff by denying it. *In re Marriage of Schwartz*, 131 Ill. App. 3d 351, 354 (1985).

¶ 27 The granting or denial of a preliminary injunction is within the trial court's broad discretionary powers, and appellate review of the court's order is limited to a determination of whether the court abused its discretion in the allowance or refusal of the injunction. *American National Bank & Trust Co. v. Chicago Title & Trust Co.*, 134 Ill. App. 3d 772, 776-77 (1985). James argues that *de novo* review is appropriate, because the preliminary injunction was based on the validity of a contract—the MSA—and whether or not the MSA's plain language needed to be "clarified." Further, he contends that the trial court made no factual findings, and thus, *de novo* review applies. Lisa agrees that the material facts are undisputed, but contends that the abuse-of-discretion standard applies because this case does not involve the validity of the MSA and because the trial court made factual findings, specifically, that there is a clear and identifiable protectable property interest in the assets at issue and that there is no adequate remedy at law. The interpretation of a contract presents a question of law subject to *de novo* review in accordance with the general rules applicable to contract interpretation. *Gallagher v. Lena*, 226 Ill. 2d 208, 219 (2007). We will review *de novo* the trial court's interpretation of the MSA, but review for an abuse of discretion its factual findings. *Cf. Kalbfleisch*, 396 Ill. App. 3d at 1112 (in preliminary injunction case, reviewing *de novo* trial court's interpretation of service-animal statute, but reviewing its findings of fact, including issuance of injunction, for an abuse of discretion).

¶ 28 A. Clearly Ascertainable Right

¶ 29 James argues first that Lisa has no clearly ascertainable right or protectable interest in the unvested benefits, where the MSA's plain language awards her an interest in the benefits that were

already vested at the time of the execution of the MSA and no interest in the unvested benefits. Courts must enforce the clear terms of a marital settlement agreement, he urges, and, when a party seeks to vacate or modify a property-settlement agreement incorporated into a divorce decree, all presumptions are in favor of the validity of the settlement. *In re Marriage of Bielawski*, 328 Ill. App. 3d 243, 251 (2002). James argues that the MSA is unambiguous and awards Lisa a specific portion of his benefits, and she has not and cannot demonstrate that the MSA is unconscionable. Further, he contends that any argument that the unvested benefits were accidentally left out of the MSA is contradicted by the MSA's language and the changes the parties made to it.

¶ 30 James maintains that the plain language of the MSA awards Lisa 58% of the benefits *vested* as of the date of the MSA. The previous language of the MSA (*i.e.*, before the parties' handwritten additions) arguably, in James' view, would have awarded Lisa a 58% interest in *all* (*i.e.*, vested and unvested) of the benefits. However, the parties agreed to change the language from any benefits being split 58%/42% to only those benefits *vested* as of the date of the MSA, as the unvested benefits will be divided under the maintenance agreement (which provides a percentage based on maintenance) as the units vest. Lisa, he notes, accepted the property in the MSA as a full and final settlement of her claims against any of James' property. She now seeks to modify the MSA's language because she changed her mind and no longer wishes to divide those units as maintenance when James receives them at a rate of 33.33% net of taxes, but would rather receive 58% of the benefits.

¶ 31 Additionally, James argues that the MSA's specific allocation of vested benefits to Lisa implies that James was granted the unvested MSCIP awards and Stock Units as provided in paragraph 8.5 of the MSA. See *West Bend Mutual Insurance Co. v. DJW-Ridgeway Building Consultants, Inc.*, 2015 IL App (2d) 140441, ¶ 38 ("the expression of one thing is the exclusion of

another"). James asserts that his interests in the benefits are either vested or unvested. The awarding of only vested interests to Lisa indicates, in his view, that he received his unvested awards under the MSA, and paragraph 8.5 makes this clear. James argues that the unvested benefits are not suddenly subject to division because the parties agreed to divide only the vested benefits.

¶ 32 Further, the inclusion clearly demonstrates, James contends, that these were not after-discovered assets; rather, they were known at the time the MSA was executed. Section 8.3, he notes, applies to marital assets "discovered after the entry of the" dissolution judgment that are not covered by the MSA due to error, mistake, or fraud. James contends that no argument can be sincerely made that Lisa discovered the benefits after the entry of the dissolution judgment.

¶ 33 James also argues that Lisa cannot show that the MSA is unconscionable. He contends that, to make the substantive changes Lisa seeks, she must show unconscionability, which she cannot show and has not even argued. 750 ILCS 5/502(b) (West 2018) (terms of marital settlement agreement are binding on parties unless court finds the agreement is unconscionable). To be unconscionable, the agreement must be improvident, totally one-sided, or oppressive. *Labuz v. Labuz*, 2016 IL App (3d) 140990, ¶ 40. Further, he contends that an MSA is presumed valid, unless it is procured by fraud or coercion or is contrary to public policy. 750 ILCS 5/502(a) (West 2018). James contends that the MSA provides Lisa with a substantial amount of income, $12,201 per month of indefinite maintenance, $12,000 per year in non-marital rental income, and significant marital property, with most of it split 58% to Lisa and 42% to him. This is hardly unconscionable, in his view.

¶ 34 Finally, James contends that any argument that the unvested benefits were inadvertently left out of the MSA is contradicted by the MSA's terms. Both benefits are specifically addressed

in the MSA and, before the changes that both parties agreed to, the MSA stated that Lisa was entitled to "58% of the [MSCIP] as exists as of today's date if and when distributed" and "58% of the Morgan Stanley Stock Units, with transfers in kind." This was modified, James notes, and initialed by both parties to *exclude* unvested benefits. Now, Lisa claims she is entitled to the original language. He urges that she cannot agree to the changes as part of the overall negotiation of certain language and now seek to undo them under the guise of clarification. The benefits, he argues, were specifically bargained for, and the language change clearly reflects that. As the maintenance award was negotiated to be percentage-based, the parties excluded unvested units that would be paid out later as maintenance.

¶ 35 Lisa responds that she is seeking to correct a mistake in the dissolution judgment, specifically, that the unvested benefits were erroneously left out of the MSA. She argues that she is not required to, and does not, argue that the MSA is ambiguous. Lisa contends that, if the parties intended that James be awarded his unvested employee benefits, these would have been listed in paragraph 8.2 of the MSA, which lists the property awarded to him. Lisa notes that the unvested benefits are not mentioned in paragraph 8.2 or anywhere in the MSA and that no language in the agreement states that, if an asset is unspecified, it is awarded to the party with title. Lisa further argues that application of James' argument to his benefits would lead to the result that he not be awarded any unvested benefits. Thus, the plain language principle does not resolve the error with the MSA that she seeks to correct. She also notes that, at the time the MSA was executed, there were no vested benefits to allocate and, applying James' argument, both parties were awarded only assets that did not exist (*i.e.*, the vested benefits). Lisa further contends that the MSA is silent as to the unvested benefits and does not award those interests to anyone.

¶ 36 Addressing the handwritten changes to the MSA that were added the day the agreement was executed, Lisa contends that James' argument is meaningless, because there were no vested benefits to divide as of the execution date. She also argues that the handwritten changes do not negate the fact that valuable assets—the unvested benefits—are still not addressed anywhere in the MSA. She points to the corresponding provisions as to James' awards and argues that they contain the same handwritten changes (*i.e.*, the parties inserted "vested as of today's date"). This language, she contends, does not state that James is awarded all the unvested benefits, as James purports the MSA to state. Thus, pursuant to James' logic, he, too, was only awarded a percentage of nothing. She also notes that there are other assets that were already titled to one party that *were* awarded 100% to that party, such as Lisa's Northern Trust account and her Fidelity investment account, both of which were already titled in her name and were 100% awarded to her in the MSA. The unvested benefits, in her view, were left out of the agreement by error.

¶ 37 Lisa further argues that, although she need not rely on paragraph 8.3 to succeed on her claim, she did discover *after* the entry of the dissolution judgment that the unvested benefits were missing from the MSA and that such exclusion was in error. Thus, paragraph 8.3 applies.

¶ 38 Addressing unconscionability, Lisa contends that she is not required to show that the MSA is unconscionable, where she is not seeking to vacate the dissolution judgment based on unconscionability, duress, or fraud. Nor is she seeking, she adds, to add new terms to the MSA. Lisa maintains that she is only seeking to clarify certain provisions to carry out the parties' intent and, in the case of the benefits, to correct errors and address the assets that were erroneously left out of the agreement.

¶ 39 Lisa disagrees with James' argument that the unvested benefits were bargained for. The MSA's plain language contradicts this claim, she asserts, where it states that only *future* deferred

compensation awards shall be distributed as income pursuant to the maintenance section. Lisa's position is that unvested benefits are past benefits, not future benefits. Since the unvested benefits had already been awarded and existed at the time of the MSA (as James argues), they would not be subject, in her view, to that provision. She urges that the unvested benefits that had already accrued during the marriage were marital assets that should have been allocated in the parties' property settlement. If the parties, she asserts, had intended for marital assets—the unvested benefits—to be considered for maintenance purposes only and not awarded to Lisa, then they would have allocated 100% of the unvested benefits to James and stated that the unvested benefits would be treated solely as income for purposes of maintenance. However, the MSA does not allocate the unvested benefits at all, in her view, and does not mention such benefits in the context of Lisa's maintenance.

¶ 40 Without deciding the merits of Lisa's claim, we conclude, based on our *de novo* review of the MSA, that the trial court did not abuse its discretion when it determined that Lisa raised a fair question concerning the existence of a protectable property interest in the unvested benefits.

¶ 41 The MSA states, in paragraph 8.1 that the following property was allocated to Lisa:

> "j. 57% of the [MSCIP] as ~~*exists*~~ *vested* as of today's date if and when distributed. Any future deferred compensation awards shall be distributed as income pursuant to the Maintenance section *[i.e. 33%]* when distributed, subject to the tax terms set out in the maintenance section (*i.e.*[,] in post-tax dollars).
>
> k. 58% of the Morgan Stanley Stock Units, *vested as of today's date*, with transfers in kind." (Emphasis added to note the parties' handwritten modifications.)

¶ 42 In paragraph 8.2, the following property is allocated to James:

> "h. 42% of the [MSCIP], *vested as of today's date*.

i. 42% of the Morgan Stanley Stock Units, *vested as of today's date*." (Emphases added to note the parties' handwritten modifications.)

¶ 43 The parties' handwritten changes explicitly reference vested benefits as of the date the MSA was executed, but there is no mention anywhere in the MSA of unvested benefits. This leaves a hole in the agreement. We agree with Lisa that the fact that the MSA elsewhere specifically awards interests that remain allocated to the party who owned 100% of that interest shows that the absence of any reference to unvested benefits was a mistake. It was not unreasonable for the trial court to find that Lisa raised a fair question that the fact that unvested benefits are not explicitly mentioned in the MSA reflects a mistake that needs correction.

¶ 44 Further, even if the choice of vested benefits necessarily includes contemplation of, and exclusion of, unvested benefits in the paragraphs allocating MSCIP awards and the Stock Units, it can reasonably be argued that these provisions become ambiguous when read in conjunction with the maintenance provision, which is arguably unclear. That provision discusses, but does not define, "growth awards" and provides that Lisa shall receive 33% of such (undefined) awards. As Lisa notes, the MSA states that only *future* deferred compensation awards (presumably MSCIP awards, but perhaps the undefined growth awards or Stock Units; the maintenance provision is unclear) shall be distributed as income (pursuant to the maintenance section). We do not find unreasonable her argument that unvested benefits are *past* benefits and not *future* benefits and that the MSA states that only *future* deferred compensation awards shall be distributed as income pursuant to the maintenance section.

¶ 45 There is also a reasonable argument to be made that Lisa raised a fair question that she discovered the unvested benefits after execution of the MSA. Again, the MSA, read as a whole, is arguably ambiguous and it is not disingenuous or unreasonable to argue that the fact that an

agreement that was modified to explicitly reference *vested* benefits shows that *unvested* benefits were inadvertently omitted.

¶ 46 In summary, we conclude that the trial court did not err in finding that Lisa has a protectable interest in the unvested benefits.

¶ 47 B. Likelihood of Success on the Merits

¶ 48 Next, James addresses the likelihood-of-success element. He argues that Lisa has no likelihood of success on the merits of her claim, asserting again that she fails to provide a sufficient reason to alter the MSA's plain language and that her underlying request for relief—the motion to clarify—is procedurally flawed because she does not offer any reason to make material changes to the contract. See *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007) (purpose of a section 2-1203 motion is "to bring to the court's attention newly[-]discovered evidence, changes in the law, or errors in the court's previous application of existing law").

¶ 49 Lisa responds that, because she is merely asking that the status quo be maintained until the March 9, 2020, hearing and that neither party have access to the newly-vested benefits, she need not show she would likely prevail on the merits after the hearing. Alternatively, she further argues that she did make this showing and that the trial court did not abuse its discretion in finding that Lisa has a strong likelihood of success on the merits, where she is not seeking to add new requirements onto the divorce decree, but to clarify the parties' obligations that were already part of the judgment.

¶ 50 We agree with Lisa. To show a likelihood of success, "[a]ll that is necessary is that the petitioning party raise a fair question as to the existence of the right claimed, lead the court to believe that he [or she] probably will be entitled to the relief prayed for if the proof should sustain his [or her] allegations, and make it appear advisable that the positions of the parties should stay

as they are until the court has had an opportunity to consider the case on the merits." *Wessel Co., Inc. v. Busa*, 28 Ill. App. 3d 686, 690 (1975). Given that we find no error with the trial court's determination that Lisa raised a fair question that she has a protectable interest in the unvested benefits, it is rather straightforward to further conclude that the trial court did not err in finding that Lisa showed a likelihood of success on the merits of her claim.

¶ 51 We reject James' arguments concerning the propriety of Lisa's motion to clarify. As noted, there was no error in the court's finding that Lisa raised a fair question that the fact that unvested benefits are not explicitly mentioned in the MSA reflects a mistake that needs correction. A section 2-1203 motion is a proper vehicle for bringing an argument that there was an error in the judgment that requires correction. See, *e.g.*, *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 518 (1992) (appeal from ruling on section 2-1203 motion; noting that mistake by parties at time of execution of contract provides grounds for rescission, where both parties were mistaken as to tax consequences of marital settlement agreement).

¶ 52 In summary, the trial court did not err in determining that Lisa has a likelihood of success on the merits of her claim.

¶ 53 C. Irreparable Harm and Adequate Remedy

¶ 54 James argues next that Lisa cannot show irreparable harm or lack of an adequate remedy at law, because, in his view, money damages would make her whole. In this case, he contends, there is no doubt that the fight is about money. He notes that Lisa herself places a monetary value on the benefits that vest in January and February 2020. Monetary damages, in his view, would be entirely adequate and, thus, there is no irreparable harm. Furthermore, James argues that Lisa impermissibly bases her alleged irreparable harm on pure speculation, where she provides no reason why she may not be able to be made whole if James dissipates or conceals the assets. James

maintains that the fact that he has or will have possession of the assets is not a sufficient reason to support an injunction. Even if he dissipated or concealed the assets, he argues, they are monetary in nature and can be traced or replaced with a money judgment.

¶ 55 Lisa responds that the trial court did not err in finding that she would face irreparable harm if the unvested benefits are not escrowed and that she has no adequate remedy at law. She maintains that James has engaged in numerous transgressions since entry of the dissolution judgment, which demonstrates that Lisa would suffer irreparable harm had the injunction not been granted. She notes that James has refused to tender to Lisa her undisputed share of the parties' liquid accounts (pursuant to the MSA's terms) and has retained sole control over about $276,000 of the liquid assets, of which approximately $153,000 (plus gains) belongs to Lisa. James also, she alleges, refused to enter the QDRO to tender Lisa her undisputed share of the qualified retirement account in his name and, and he refuses to divide the other non-qualified retirement accounts. Thus, in her view, James' intentional deprivation of assets indisputably belonging to Lisa and his lack of transparency as to those assets since the dissolution judgment are significant transgressions. Lisa further asserts that James has not placed over $100,000 from a Morgan Stanley Hedge Fund into a joint escrow account to pay ongoing expenses of the former marital residence until it is sold. The majority of the parties' assets, she urges, aside from the recently vested, liquid benefits, are illiquid retirement assets. She maintains that there may be insufficient liquidity from James' share of the marital estate to make Lisa whole if James dissipates or conceals funds from the newly-vested benefits. Thus, it would not be practical to assume James has the ability to pay money damages.

¶ 56 In his reply brief, James asserts that Lisa is attempting to improperly paint him as noncompliant with court orders. He notes that, upon the filing of Lisa's motion to clarify, section

2-1203(b) stayed enforcement of the dissolution judgment. 735 ILCS 5/2-1203(b) (West 2018). James contends that he has "numerous issues he would like to have enforced," such as the listing of the marital residence for sale, which Lisa allegedly has refused to do. However, he urges, given Lisa's motion to clarify, he cannot do so. He also maintains that, in spite of the stay, he has complied with the judgment, including paying maintenance, paying certain home expenses, and paying the children's college and other expenses. James contends that Lisa's claim of lack of compliance is disingenuous and circular, where she cannot argue that he is not complying with a judgment that her own motion has stalled.

¶ 57 "[I]rreparable harm occurs only where the remedy at law is inadequate; that is, where monetary damages cannot adequately compensate the injury, or the injury cannot be measured by pecuniary standards." *Best Coin-Op, Inc. v. Old Willow Falls Condominium Ass'n*, 120 Ill. App. 3d 830, 834 (1983). A preliminary injunction should not be granted where damages caused by alteration of the status quo pending a final decision on the merits can be compensated adequately by monetary damages calculable with a reasonable degree of certainty. *Id.* at 835.

¶ 58 We agree with Lisa that the trial court did not err in determining that she raised a fair question that she would face irreparable harm and have no adequate legal remedy if the injunction were not granted. James does not deny Lisa's allegations of his transgressions, asserting merely that the stay somehow precluded or allowed him to fail to abide by the MSA. Elsewhere, however, he contends that he is complying with (some of) his obligations under the agreement, including paying maintenance, home expenses, and the children's expenses. *Bollweg v. Richard Marker Associates, Inc.*, 353 Ill. App. 3d 560, 577 (2004) ("[t]o demonstrate irreparable injury, the moving party need not show an injury that is beyond repair or compensation in damages, but rather need show only transgressions of a continuing nature). We acknowledge that James earns a generous

income from which he conceivably could pay a money judgment. However, given the contentious nature of the proceedings and James' failure to deny Lisa's allegations, we cannot conclude that the trial court abused its discretion in finding that Lisa raised a fair question as to the irreparable-harm and adequate-remedy elements.

¶ 59 D. Balance of Hardships

¶ 60 James' final argument is that, even if Lisa meets all the requirements for a preliminary injunction, the balancing of harms weighs in his favor. Requiring him to move the assets the MSA awarded to him, James argues, or to freeze them, is a much greater inconvenience to him than Lisa would suffer in denying her motion. James asserts that Lisa provides no basis or support for any concerns that he will dissipate or conceal any assets and fails to articulate a reason why a money judgment is inadequate in the unlikely event she succeeds. She did not show, in his view, that she would suffer more harm without an injunction than James will suffer with it. Thus, the balance of the harms is plainly, he believes, in his favor and the trial court should have denied Lisa's motion.

¶ 61 Lisa responds that the trial court did not abuse its discretion in finding that balancing of harms does not weigh in James' favor. She argues that she has demonstrated that she would suffer irreparable harm if the injunction did not issue. James has shown a great likelihood, in her view, to conceal or dissipate the benefits he receives, evidenced by his failure to transfer undisputed assets to Lisa pursuant to the dissolution judgment and by his lack of transparency to Lisa. Moreover, he believes that Lisa has no rightful claim to the unvested benefits and will likely make it very difficult for Lisa to recoup those funds if she were successful on the merits. Lisa urges that she is merely seeking to maintain the status quo until the trial court adjudicates her motion to clarify. James' temporary inconvenience in having to move the unvested benefits to his attorney's

escrow account and freeze the unvested benefits does not outweigh, she argues, the burden and potential harm to her.

¶ 62 We agree with Lisa. Given James' generous income (over $470,000 net per year), it is disingenuous for him to argue that he would suffer more harm with an injunction on the funds that vested in January and February 2020 (about $96,326) than Lisa, who relies on his maintenance payments for income, will suffer without it. Further, the hearing on Lisa's motion to clarify is imminent. If she does not prevail, James will soon have access to his benefits.

¶ 63 In sum, the trial court did not err in finding that the balance of the hardships would fall more on Lisa and it did not abuse its discretion in granting the preliminary injunction.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, the judgment of the circuit court of Lake County is affirmed.

¶ 66 Affirmed.