# Illinois Official Reports

## Appellate Court




***In re Marriage of Platt*, 2015 IL App (2d) 141174**

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| Appellate Court Caption | *In re* MARRIAGE OF FREDERICK H. PLATT, JR., Petitioner, and MELISSA A. PLATT, Respondent and Third-Party Petitioner-Appellant (Stacy Hux, Third-Party Respondent-Appellee). |
| District & No. | Second District<br>Docket No. 2-14-1174 |
| Filed | November 6, 2015 |
| Decision Under Review | Appeal from the Circuit Court of Lake County, No. 11-D-837; the Hon. Patricia S. Fix, Judge, presiding. |
| Judgment | Reversed and remanded with directions. |
| Counsel on Appeal | Denis J. McKeown and Joseph C. McKeown, both of Denis J. McKeown & Associates, of Waukegan, for appellant.<br><br>Dwayne Douglas, of Law Offices of Dwayne Douglas, P.C., of Lake Bluff, for appellee. |
| Panel | JUSTICE SPENCE delivered the judgment of the court, with opinion. Presiding Justice Schostok and Justice Zenoff concurred in the judgment and opinion. |

## OPINION

¶ 1 Melissa A. Platt appeals from an order denying a motion in which she sought enforcement of the pension provisions of the marital settlement agreement (MSA) that was part of the dissolution judgment ending her marriage to Frederick H. Platt, Jr. Specifically, her motion sought entry of a qualified domestic relations order (QDRO). Third-party respondent Stacy Hux, Frederick's surviving spouse, moved to dismiss the motion on the basis that Frederick's death had stripped the court of jurisdiction over the matter. Stacy now argues that, because the court neither explicitly bifurcated the action nor reserved the issue of entry of a QDRO, at Frederick's death no final dissolution judgment existed and the dissolution action therefore abated. We hold that the dissolution judgment was final and enforceable despite the absence of the QDRO needed to effect the pension distribution, and thus we hold that Melissa was entitled to enforce the MSA. We therefore reverse the denial of Melissa's motion and remand the matter for enforcement of the MSA's pension provisions by appropriate available means.

¶ 2 I. BACKGROUND

¶ 3 Frederick filed his petition for the dissolution of the marriage on April 21, 2011, and Melissa responded. On October 31, 2012, Melissa filed a petition seeking to join Stacy, with whom Frederick was then living, as a party. The petition noted that, on October 5, 2012, Frederick had suffered a traumatic brain injury in a motorcycle accident and was disabled. Stacy agreed to be joined and filed her appearance on December 5, 2012.

¶ 4 On January 24, 2013, a motion filed by Melissa noted that, in a separate case, the court had appointed temporary guardians of Frederick's estate and person. The court entered the judgment for dissolution of marriage on April 3, 2013. This incorporated the MSA, which provided that the parties would equally divide the marital portion of Frederick's United States government pensions. Further, Frederick would act to cause the filing of all documents or orders needed to accomplish that result; in other words, he would cooperate in the drafting and filing of a QDRO. The dissolution judgment contained a finding of immediate enforceability and appealability under Illinois Supreme Court Rule 304(a) (eff. Feb. 26, 2010).

¶ 5 On September 16, 2014, Melissa filed an "Emergency Motion to Enter a Federal Employee's Retirement Order Pursuant to 5 CFR Section 838." She stated that Frederick had died in a skydiving accident, but that the parties had not yet completed the paperwork necessary to have Frederick's pensions divided as required by the MSA. She alleged that, absent the order, Stacy, who had married Frederick, would be treated as Frederick's surviving spouse in the pension distribution.

¶ 6 Stacy moved to dismiss the motion under section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2014)). She asserted that, because Frederick was dead, the court lacked personal jurisdiction over him and thus could not order the relevant modification to the distribution of his pensions. She further asserted that the court could not issue any orders to the relevant federal agency. Finally, she asserted that, because Melissa was "requesting [that the] Court enter a federal order," the court lacked subject-matter jurisdiction.

¶ 7 Melissa responded that, regardless of Frederick's death or the specifics of the requested relief, the court had the power to enforce its own judgment.

¶ 8 On October 27, 2014, the court entered an order stating that with Frederick's death it lost jurisdiction over "all matters"; it therefore denied relief to Melissa. Melissa filed a timely notice of appeal.

¶ 9 II. ANALYSIS

¶ 10 On appeal, Melissa again asserts that the court had the power to enforce the dissolution judgment. She has asked to withdraw an argument that depends on the ongoing existence of a guardian of Frederick's estate. However, she suggests that forms of relief other than the entry of the anticipated QDRO are available.

¶ 11 Stacy responds. First, she argues that the record on appeal is incomplete and that Melissa fails to provide sufficient legal authority to support her arguments. However, the record and authority provided are sufficient to resolve the narrow legal issue of whether the trial court had jurisdiction to enforce the dissolution judgment.

¶ 12 Next, Stacy does not argue explicitly that the trial court lacked jurisdiction to enforce the MSA's requirement for a QDRO. Instead, she argues that the court was correct that the action abated when Frederick died. Specifically, she argues that, because the court did not explicitly reserve the issue of the QDRO or bifurcate the action, no final dissolution judgment existed at the time of Frederick's death. She asserts that, in the absence of a final dissolution judgment, the rule that a dissolution action abates on the death of a spouse was applicable. Alternatively, she argues that, under the current circumstances, federal regulations do not allow the entry of an order that would divide the pensions.

¶ 13 We reverse the denial of Melissa's motion. Because the dissolution judgment was final and enforceable when Frederick died, the action did not abate and no basis existed for the trial court to rule that it lacked jurisdiction. A dissolution action does not abate on the death of a party spouse after the entry of a final dissolution judgment. Thus, Melissa is entitled to enforce the pension provisions in the dissolution judgment against Stacy, who is a party to the judgment. Because the court has jurisdiction to enforce its judgment, the unavailability of a particular mode of relief is not a basis for refusing to enforce the judgment altogether.

¶ 14 Initially, we suggest that Stacy's position in this appeal is problematic. She argues that no final dissolution judgment was in place at the time of Frederick's death. The natural implication of her position is that Melissa remained married to Frederick at the time of his death and that Stacy's marriage to Frederick was bigamous. We do not think that Stacy intends to argue this, but nothing in her brief explains how a dissolution judgment could be final enough to end the marriage but not final enough to prevent abatement.

¶ 15 Regardless of how Stacy would suggest resolving that conundrum, it is a purely hypothetical one, as the dissolution judgment was final at the time of Frederick's death. Illinois precedent, although not wholly consistent, nevertheless establishes that the absence of a QDRO required in a dissolution judgment does not prevent the judgment from being final. In other words, the entry of a QDRO is part of carrying out a dissolution judgment as opposed to a substantive part of the judgment.

¶ 16 That a QDRO is not a substantive part of the judgment is shown by the analysis used by Illinois courts when QDROs have been challenged on appeal. In *In re Marriage of Schinelli*,

406 Ill. App. 3d 991 (2011), we were presented with the problem of a dissolution judgment that was factually impossible to enforce through the contemplated QDRO; we treated the problem as how to best effectuate the existing dissolution judgment, and not as a judgment not yet finalized. In *In re Marriage of David*, 367 Ill. App. 3d 908, 913 (2006), we held that the relevant question in deciding the propriety of the trial court's entry of an amended QDRO was whether the QDRO conformed to the terms of the dissolution judgment. More directly, in *In re Marriage of Allen*, 343 Ill. App. 3d 410, 412-13 (2003), a Third District panel held that, because the amendment of a QDRO to better conform to a dissolution judgment was not an amendment of the judgment itself, the trial court could amend the QDRO as part of its jurisdiction to enforce the dissolution judgment.

¶ 17 We recognize that, in *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1038 (1993), a First District panel treated the absence of an anticipated QDRO as a barrier to finality. It noted that a final order is defined as one that "dispose[s] of the rights of the parties as to the entire controversy or some part of the controversy which is definite and separate, so that nothing remains but execution of the judgment." *Petraitis*, 263 Ill. App. 3d at 1038. It reasoned that, because no QDRO had been entered, "the matter of distribution of that marital property[, that is, the retirement plans,] had not been disposed of." *Petraitis*, 263 Ill. App. 3d at 1038. That holding fails to recognize that the entry of a QDRO is part of the execution of an existing judgment. That is why *Allen* and *David* insist that a QDRO's propriety is measured by its conformity to the dissolution judgment. We thus conclude that the *Petraitis* court was incorrect when it suggested that the need for a QDRO to accomplish the distribution of property prevented the dissolution judgment from fully deciding the property disposition.

¶ 18 We further conclude that, because the dissolution judgment was final when Frederick died, the action did not abate. When a party spouse dies before the entry of a dissolution judgment, the dissolution action abates. *In re Marriage of Ignatius*, 338 Ill. App. 3d 652, 657-58 (2003). We note that, according to a longstanding rationale, the basis for the abatement of a dissolution action on a spouse's death is that the court's personal and subject-matter jurisdiction to change a person's marital status does not reach beyond death. See *Bushnell v. Cooper*, 289 Ill. 260, 264 (1919) ("death has settled the question of separation beyond all controversy," and so jurisdiction to proceed with a divorce action is lacking). This explains why the trial court here concluded that it lacked jurisdiction. However, the finality of the dissolution judgment meant that Frederick and Melissa's marriage was unequivocally over when he died. Thus no abatement occurred.

¶ 19 Stacy argues that the federal regulations applicable to Frederick's pensions do not allow a posthumous order to be used to divide a pension. She argues that this is an alternative basis to affirm the court's judgment. Even if Stacy is correct in her interpretation of the regulations, Melissa is nevertheless entitled to relief. See 735 ILCS 5/2-617 (West 2014) (a party who has pleaded or established facts that entitle him or her to relief, but has sought the wrong relief, is entitled to amend the pleadings on appropriate terms). The dissolution judgment established Frederick's and Melissa's rights in the property specified; those rights included Melissa's right to a share of Frederick's pensions.

¶ 20 Stacy's argument appears to imply that Melissa's right to a share of the pensions is conditioned on the availability of the anticipated QDRO to effectuate their distribution. We hold that such an interpretation is not consistent with the dissolution judgment. We construe

a dissolution judgment as we would any other written instrument. *Schinelli*, 406 Ill. App. 3d at 1002. A dissolution judgment that has become impossible to carry out should be enforced to match the judgment's overall intent. For instance, in *Schinelli,* the dissolution judgment awarded each party a specific dollar amount from a retirement account. *Schinelli,* 406 Ill. App. 3d at 1001. However, by the time one party sought a QDRO to effect the ordered distribution, the account's value had dropped "drastically," such that the distribution to at least one party would have to be much lower. *Schinelli*, 406 Ill. App. 3d at 1001. We held that, to be "consistent with the order of dissolution" (*Schinelli*, 406 Ill. App. 3d at 1005), the QDRO would have to give each party a portion of the account equal to the proportion awarded by the dissolution judgment. *Schinelli*, 406 Ill. App. 3d at 1002. Frederick and Melissa's MSA, which constitutes the relevant part of the dissolution judgment, is constructed along standard lines. The property portion lists and divides the couple's property, and nothing in it suggests that the means of distributing the pensions is critical to its intentions. Therefore, the availability of the anticipated QDRO is not essential to distributing the pensions, and the court should effectuate that distribution by the best means at its disposal.

¶ 21 III. CONCLUSION

¶ 22 For the reasons stated, we reverse the order of the trial court and remand the matter for enforcement of the dissolution judgment as discussed.

¶ 23 Reversed and remanded with directions.