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2011 IL App (3d) 100729-U

Order filed November 8, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> MARRIAGE OF JANE NORBERG,)	Appeal from the Circuit Court
n/k/a JANE CHOISSER,)	of the 12th Judicial Circuit,
)	Will County, Illinois,
Petitioner-Appellee,)	
)	Appeal No. 3-10-0729
and)	Circuit No. 98-D-429
)	
TIMOTHY NORBERG,)	Honorable
)	Dinah L. Archambeault,
Respondent-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Carter and Justice Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not abuse its discretion in finding that the parties' oral settlement agreement regarding the disposition of their marital property and issues of maintenance, support, custody and visitation was controlling. The trial court did not abuse its discretion in finding there was no ambiguity in the parties' oral settlement agreement regarding their intent to share all of the respondent's pension benefits stemming from his employment as an iron worker during their marriage.
- ¶ 2 On March 24, 1998, the petitioner, Jane Norberg, n/k/a Jane Choisser, filed a petition for dissolution of her 17-year marriage to the respondent, Timothy Norberg. During the course of

the dissolution proceedings, both parties were represented by legal counsel.

¶ 3 On February 25, 1999, a hearing regarding the parties' settlement agreement took place, during which each party was present with counsel. The respondent's attorney indicated to the court, "I think we have an agreement." The petitioner's attorney offered to recite the parties' agreement to the court, but the trial judge requested that the parties themselves testify to their agreement. Prior to the petitioner testifying, the trial judge asked the petitioner whether she and her attorney had reached an agreement with the respondent. The petitioner replied that she had reached an agreement with the respondent.

¶ 4 The petitioner testified that the parties had entered into an agreement, subject to the court's approval. The petitioner gave detailed testimony regarding the parties' agreement for the distribution of the parties' marital home, personal property, individual retirement accounts, and vehicles. The petitioner also gave detailed testimony regarding the parties' agreement on issues of custody and visitation of their three children, child support, waiver of maintenance, the respondent's workers' compensation cause of action, the respondent's trust account, the petitioner's future employment as a nurse, and the respondent's iron workers pension.

¶ 5 Specifically, as to the respondent's pension, the petitioner testified as follows:

"[Petitioner's Attorney]: Now, [the respondent] has an Iron Workers Pension. Would this Agreement include that this would be dealt with according to the *Hunt* [c]ase? In other words, it would be distributed when and as [the respondent] received payments?

[Petitioner]: Yes.

* * *

[Respondent's Attorney]: *** You understand as far as the Iron Workers Pension that

you know what the *Hunt*, do you understand what that means?

[Petitioner]: Yes, I do.

[Respondent's Attorney]: It is based upon how long you were married and what portion of that leads to however long, because [the respondent] was an iron worker before you were married?

[Petitioner]: Correct."

¶ 6 In regard to the pension term of the agreement and the agreement in general, the respondent testified that he had listened to the petitioner's testimony and that if he was asked the same questions his answers would be substantially the same. He also testified as follows:

"[Respondent's Attorney]: As far as your Iron Worker's Pension is concerned, you are going to give [the petitioner] a portion of that, that equals what has been referred to as the *Hunt* case, which we discussed as far as what she is going to get when you take it?

[Respondent]: Correct.

* * *

[Petitioner's Attorney]: And this Agreement that you testified to and [the petitioner] testified to, do you feel it is fair and equitable?

[Respondent]: Yes, I do.

* * *

[Petitioner's Attorney]: And you are asking the Court to approve this agreement?

[Respondent]: Yes."

¶ 7 After the parties testified, the trial court indicated for the record to show that "the parties advise[d] the Court that they ha[d] reached an oral Property Settlement Agreement" and both

parties had been sworn and testified to the terms of that agreement. The trial court found the terms of the agreement to be fair, just, and equitable. The trial judge asked the parties' attorneys when they would be able to present the written judgment. The respondent's attorney indicated that the judgment would be presented to the court on March 16, 1999.

¶ 8 On March 16, 1999, the court entered its judgment for dissolution of marriage. The judgment ordered that "pursuant to the agreement of the parties" the petitioner was "awarded a present fractional interest in [the respondent's] S.M.A. pension plan" and was entitled to a portion of the pension payments if and when the respondent received benefits. The judgment set forth the formula to determine the petitioner's portion of the payments, parenthetically noting that it was "commonly known as the 'Hunt' formula." The judgment also indicated that each party waived any right to the pension or other employment benefits of the other party, except as provided for in the judgment.

¶ 9 On March 31, 2010, the petitioner filed a "Motion for Entry of Qualified Domestic Relations Order" with an attached proposed order. The proposed order indicated that the respondent was a participant in the iron workers' "pension fund" and "Supplemental Monthly Annuity Fund" (SMA fund) and that petitioner was entitled to receive 50% of each. The respondent objected.

¶ 10 At the hearing on the motion, the petitioner argued that the terms of the dissolution judgment were ambiguous regarding the respondent's pension, but the parties had intended to divide the marital portion of each fund. The respondent contended that the parties intended that the petitioner only be entitled to an interest in his SMA fund, exactly as indicated in the judgment, and that the petitioner had waived her interest to the "pension fund."

¶ 11 The trial court found that during the parties' marriage the respondent worked as an iron worker and accrued pension benefits that included both the pension fund and the SMA fund. The trial court found that the parties' oral agreement was not ambiguous in that it had referred to the respondent's pension, which included all iron worker's pension benefits. The trial court also found that there was no indication that the parties' oral agreement was contingent on it being written and that the oral agreement controlled. The trial court noted that the written judgment, as entered, was incomplete because it had referenced only one of the two pension benefits available through the respondent's pension. The trial court modified its judgment *nunc pro tunc* to indicate that the respondent's pension included benefits from both the pension fund and the SMA fund.

The trial court granted the petitioner's motion to enter a qualified domestic relations order relating to each fund. The respondent appealed.

¶ 12 ANALYSIS

¶ 13 On appeal, the respondent contends that the trial court's written judgment of their settlement agreement was the clear and unambiguous written agreement of the parties and should be enforced as written. We disagree.

¶ 14 Section 502 of the Illinois Marriage and Dissolution of Marriage Act (Act) provides for the parties to a dissolution of marriage to enter into either written or oral agreements for the disposition of marital property and regarding issues of maintenance, support, custody and visitation. 750 ILCS 5/502 (West 2010). An oral settlement agreement is valid and enforceable where the record does not evidence an intention by the parties to reduce the agreement to writing as a condition precedent to the binding effect of the oral agreement. *In re Marriage of Gibson-Terry*, 325 Ill. App. 3d 317 (2001); *In re Marriage of Sarron*, 247 Ill. App. 3d 819 (1993).

¶ 15 Here, the record clearly indicates that the parties entered into an oral agreement and the terms of that agreement were set forth, through the parties' own sworn testimony, before the trial court. The parties gave detailed proof of their agreement before the court and gave no indication that their oral agreement was conditioned upon the agreement being reduced to writing or that a written agreement had been contemplated during negotiations. Even if the parties expected that a formal written agreement eventually would be executed, those expectations do not invalidate the oral agreement where it was set forth orally and in great detail before the court. See *Sarron*, 247 Ill. App. 3d 819.

¶ 16 Furthermore, there was no evidence in the record of the parties intending that a signed written agreement be a condition precedent to the binding effect of the oral agreement. Here, the parties testified to the terms of their oral agreement. At the conclusion of that testimony, the trial court found that the parties had reached an "oral Property Settlement Agreement" and requested that the parties submit a proposed judgment based on their oral agreement. The trial court's judgment was not a written agreement of the parties but, instead, a typed copy of the judgment. See *Gibson-Terry*, 325 Ill. App. 3d 317.

¶ 17 Therefore, the trial court did not abuse its discretion in finding that the parties had reached a valid oral settlement agreement. The parties' oral settlement agreement, as testified to by the parties on February 25, 1999, was controlling.

¶ 18 In the parties' oral settlement agreement, they agreed that the petitioner would take part of the respondent's iron worker's pension. There was no evidence indicating that either party intended for certain benefits of the respondent's pension to be excluded. Thus, the record supports the trial court's finding that the respondent's pension was comprised of both the pension

fund and the SMA fund. We affirm.

¶ 19

CONCLUSION

¶ 20 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 21 Affirmed.